NO. 90-256

In the
Supreme Court of the United States

OCTOBER TERM, 1990

G. RUSSELL CHAMBERS
Petitioner,

v.

NASCO, INC.
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

JOINT APPENDIX
VOLUME I

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PETITION FOR CERTIORARI FILED AUGUST 2, 1990
CERTIORARI GRANTED OCTOBER 1, 1990

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RELEVANT DOCKET ENTRIES FROM THE UNITED STATES DISTRICT COURT OF THE WESTERN DISTRICT OF LOUISIANA

10-17-83	1	COMPLAINT 1[1]
11-14-83	14	ANSWER (Both Ds).(dm) 158
11-8-85	234	OPINION (NSS) ruling in favor of P; Ds to comply w/agreement. P. to submit judgment w/i 10 days of this date. NOE/twt (dw) 1709
11-27-85	236	ME--clerk ordered to substitute corrected page to opinion of 11-8-85 (NSS/ps) NOE/wpg 1742
11-27-85	237	JUDGMENT in favor of P, NASCO, Inc. and ag/Ds, G. Russell Chamber, Calcasieu TV and Radio, Inc., and Mabel Christine Baker (see record copy for further detail). (NSS/ps) DKT-D 12-2-85 1744
12-27-85	251	NOTICE (D-Calcasieu Television and Chambers) of Appeal from Judgment entered 12-2-85 NOE-Ct. of Appeals; Scott; Benoit; Weave; Harwell, Jr.; Ross; Scofield; Hoskins; Golden; Gray III w/transc. order; Mc Cabe; Boland; Garvey; Rubin; Curry 12-30-85 (dd) (Appeal fee paid 11-27-85) 1901
7-01-86	276	MOTION (NASCO) for Judicial

[1] The numbers are the end of the minute entries were added by hand by the clerk of court to designate the page of the record upon which the document corresponding to the minute entry appears.

		Assistance and/or Supervision w/Order that NASCO shall submit memorandum of authorities by 7-7-86 (NSS/ps) NOE/wpg 2086
7-31-86	297	ORDER (NSS) Granting #295-296; the 8-9-83 purchase agreement shall not be terminated by the Ds for any reason related to the delays in obtaining final FCC approval of the license transfer application; the contractual deadlines of the parties obligations under the purchase agreement is extended for 6 months from the date the FCC approval becomes final; closing of the sale of KPLC-TV to take place on 8-26-86; transaction to preclose on 8-25-86; (NSS/mll) NOE (ced) 2236
8-26-86	311	ORDER that the closing is extended and shall take place NLT 8/27/86 @ 5:00 p.m. in Lake Charles, LA.; all other orders, judgments, & opinions of the court remain unchanged (RPJ/NSS/all) NOE/ms 2384
9-2-86		ENTRY OF DISMISSAL fm 5th Cir. Ct.Ap.: appeal (86-4581) dismissed on 8/27/86 pursuant to motion of appellants; NOE to NSS, B. Gates (all) 2412
9-24-86	320	ORDER from 5th Cir. Ct. Ap.: pursuant to the agreement & stipulation of the parties, all substantive issues are hereby DISMISSED w/prejudice; the effect of the dismissal of these issues from this appeal is to make final the judgment of the district court from which the appeal was taken; the dismissal of the substantive issues in this appeal has no bearing of

		effect on the issues relating to sanctions; this appeal remains a viable appeal but only w/respect to the issues relating to sanctions; NOE to Judge Scott (all) 2418
10-7-86	323	MANDATE/OPINION fm 5th Cir.Ct.Ap.: the judgment & order of the District Court are AFFIRMED and the cause is REMANDED to the District Court for further proceedings (re costs, attorney's fees & sanctions) in accordance w/the opinion of this Court; defts.-appellants pay to pltf.-appellee DOUBLE costs on appeal, to be taxed by the Clerk of this Court; NOE to Judge Scott; Bill Gates — record returned — placed in closed files (all) 2461
8-26-87	451	ORDER (NSS) that the fixed sum of $850,000 together with interest accrued from 8-21-87 until disbursed be disbursed to NASCO in accordance with instructions to be provided by John B. Scofield or Davil (sic) L. Hoskins; it is ordered that the balance of the Registry Funds is to be retained in the Registry of the Court in accordance with the terms and provisions set forth in this court's order of 8-27-87 to be payable toward any and all monetary sanctions which may be imposed agn. the defts., Calcasieu TV & Radio and G. Russell Chambers or their counsel pursuant to the motion of the plaintiff, the mandate of the U.S. Court of Appeal of the 5th Circuit in the matter bearing appellate docket number 86-4003, and/or the orders of this court. (NSS/ced) NOE/tlw (to financial 8-27-87

by ced.) 2636

12-29-86 452 MOTION (P) to fix compensatory damages pursuant to contempt judgment, to fix appeallate (sic) sanctions, and to impose sanctions, ref. to NSS (ced) 2639

1-23-90 511 OPINION on a Motion to Fix Compensatory Damages Pursuant to Contempt Judgment, to Fix Appellate Sanctions, and to Impose Sanctions filed by NASCO. (NSS/om) NOE 1-25-90 3420

1-23-89 512 JUDGMENT in favor of NASCO, Inc. and against respondent, G. Russell Chambers, in the full sum of $66,286.65 representing the amount of the sanctions imposed by order of the U.S. Court of Appeal for the Fifth Circuit, with interest. Further ordered that judgment be rendered in favor of NASCO, Inc. and against G. Russell Chambers in the full sum of $966,644, as sanctions, representting the total attorney's fees and expenses incurred and paid by NASCO, Inc. in this matter, with interest. Further ordered that A. J. Gray III be stricken from the roll of attorneys authorized to practice in the WDofLA. (sic) and that he be prohibited for a period of three years from making application for readmission. (CONT'D) 3478

1-23-89 512 JUDGMENT CONTINUED: Further ordered that Richard A. Curry be suspended from practice in the WDofLA. (sic) for a period of six months. Further (sic) ordered that Edwin A. McCabe of

the Massachusetts Bar is severely reprimanded and declared ineligible to practice in the WDof LA. (sic) for a period of five years. Further ordered that the Clerk of Court shall send a certified copy of this Opinion and Judgment to (1) the Office of Bar Counsel, Daniel Kluback, Board of Bar Overseers of the Supreme Judicial Court, 11 Beacon Street, Boston, Massachusetts 02108, and (2) the Supreme Court of Louisiana, 109 Supreme Court Building, 301 Loyola Avenue , New Orleans, LA 70112-1887. (NSS) DKT-D 1-25-89 (om) NCE per instructions.

2-21-89 547 NOTICE OF APPEAL (D's. Calcasieu TV & Radio & G. Russell Chambers) to the 5th Circuit Ct. of Appeals from the judgment entered on 1-23-89 assessing sanctions against them; APPEAL FEES PAID; NOE 2/22/89 to Ct. Appeals; Barham, Tritico; Harwell/Ross; Scofield/Hoskins; Rider; Smith; Golden; McCabe/Garvey/Gray; Boland; Torian; Keller; Canaday: Crow: Judge Scott; M. Leleux (nl) 3675

RELEVANT DOCKET ENTRIES FROM THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

2-6-90 AFFIRMED and REMANDED (13 pages)

5-4-90 File and order denying petitions (3) for Rehearing En Banc. File and order denying petitions for Rehearing except as to Curry—REMANDED.

NASCO, INC.

v.

CALCASIEU TELEVISION AND RADIO, INC.:
G. Russell Chambers and
Mabel Christine Baker.

Civ. A. No. 83-2564.

United States District Court,
W.D. Louisiana,
Lake Charles Division.

Nov. 8, 1985.

OPINION

NAUMAN S. SCOTT, District Judge.

This is an action for specific performance of a Buy and Sell Agreement (Agreement) executed on August 9, 1983, providing for the sale and purchase of television station KPLC-TV in Lake Charles, Louisiana.

Jurisdiction is found under the provisions of 28 U.S.C. § 1332.

The plaintiff is Nasco, Inc. (Nasco), the prospective purchaser of the station. The defendants are Calcasieu Television and Radio, Inc. (CTR), the owner and prospective seller of the station; G. Russell Chambers (Chambers), the sole shareholder and sole director of CTR, who signed the Agreement on behalf of CTR and in his individual capacity; and Mable Christine Baker (Baker), in her

capacity as the Trustee of a Facility Trust which is the alleged record owner of certain immovable properties previously owned by CTR and covered by the Agreement. Chambers is Baker's brother, and is the settlor of the Trust of which Baker is Trustee. His three adult children are the beneficiaries.

This matter was tried to the Court without a jury as a suit in equity on April 17, 1985. Prior to trial, Nasco dismissed without prejudice certain claims in contract and in tort, reducing its case in chief to a purely equitable claim for specific performance of the August 9th Agreement and the defenses applicable thereto. By order of the Court, trial was limited solely to those claims, severing all other issues (including damages) for trial at a later date.

Chambers and CTR contend that the remedy of specific performance is no longer available to Nasco because the title of Baker is protected by the Louisiana Public Records doctrine thereby reducing Nasco's remedies to a claim for damages.

FINDINGS OF FACT

1. On August 9, 1983, Nasco, as buyer, and CTR and Chambers, as sellers, entered into the Agreement to convey the television facilities and the broadcast license of KPLC-TV in Lake Charles, Louisiana for the purchase price of $18 million dollars. The Agreement has never been recorded in Calcasieu and Jefferson Davis Parishes where the properties are located.

2. It is expressly recognized in the Agreement that the Agreement could not be consummated unless and until Federal Communication Commission (FCC) approved the transfer of the KPLC license to Nasco.

Paragraph 6 of the Agreement provides as follows:

> "It is specifically understood and agreed that the consummation of this Agreement shall be in all respects subject to the approval of the Commission (Federal Communications Commission-FCC).Upon execution of the Agreement, *Buyer and Seller shall proceed as expeditiously as practicable to file all requisite applications* and other necessary instruments, and agree thereafter to prosecute said application or applications with all reasonable diligence and otherwise to cooperate with each other and to use their best efforts to obtain the requisite consent and approval promptly and to carry out the provisions of this Agreement. *In no event shall the Application be filed later than forty five (45) days from the date of the Agreement.*" (Emphasis ours).

Thus the joint application for transfer of the license was to be filed no later than September 23, 1983.

3. On August 22, 1983 Brian Burns and Jim Smith who had signed the Agreement on behalf of Nasco visited KPLC-TV. This was the only instance on which any representative of Nasco was present at the TV station prior to September 23, 1983. It was during this visit that Rita Guillory, president of CTR, learned for the first time that KPLC-TV was to be sold, and that Chambers had signed the Nasco Agreement of August 9, 1983. The president of CTR had no part in the negotiations leading to the execution of the Agreement; nor was she consulted regarding the Agreement. In fact no officers or employees of the station except Chambers and his lawyers were aware that the Agreement existed.

Up to the time that he left a meeting with Nasco

representative on August 22, 1983, Chambers and CTR had been cooperative in carrying out the Agreement.

4. On August 28, 1983 Chambers' application for a 3½ million dollar bond issue was rescinded or refused. Although the bond issue had no relationship to the performance of the Agreement, Chambers continuously referred to this failed bond issue as a basis for delaying the submission of CTR's portion of the FCC application to transfer the license.

5. Chambers called Bill Cook, chairman of Nasco, on August 29, 1983 and tried to talk him out of going through with the Agreement, offered to reimburse all of Nasco's expenses and pay some additional money. Cook's reply was, "My only interest is in acquiring KPLC-TV." Chambers had demonstrated as early as August 29, 1983 that he desired to avoid performance of the Agreement.

6. On September 2, 1983, Nasco informed CTR and Chambers that Nasco's portion of the Assignment Application was ready and in suitable form for filing with the FCC.

7. On or about September 7, 1983 Chambers had a telephone conversation with Brian Burns in which he referred to the failed bond issue and then asked "What would you say if I didn't file?" Burns replied that Nasco had been ready to file its portion of the FCC application since September 1 or 2 and that he would be very disappointed.

8. Burns and Chambers spoke again on Monday, September 12, 1983. When Chambers asked what Burns thought of Chambers' remark on September 7th, Burns replied that, based on his brief contacts with Chambers, he thought that Chambers would do what the agreement provided. Chambers answered that he recognized that he

(CTR) had a contractual obligation to file CTR's portion of the FCC application.

9. On the next day they spoke again. Chambers, referring again to the lack of any progress in resolving the bond problem, stated that he recognized his obligation but that, if he didn't have an answer to the bond problem by September 23, 1983, he would not file. The bond problem was still entirely unrelated to the Agreement.

10. In a letter (Ex. P2) dated September 16, 1983, Nasco (Brian Burns) refers to the content of the conversations (Paragraph 6-9 above) in detail, and again notified CTR and Chambers that the assignee's part of the application had been ready and in suitable form for filing since September 2nd and requested that CTR "immediately prepare, have executed and forwarded the assignor's portion of the assignment application prior to September 23, 1983."

Chambers replied on September 21, 1983 (Ex. P3) that the Agreement speaks for itself and that he understood that his "attorney has contacted your attorney." He did not deny any of the content of the September 16, 1983 letter (Ex. P2).

11. On September 23, 1983, Nasco's FCC counsel, John Stewart, was informed by defendants' FCC counsel, Roy Russo, that the assignor's portion of the Application would not be filed on that date. On that same date Stewart caused a letter to be hand delivered to Russo, stating again that Nasco was ready and willing to file the assignee's portion of the Application and that Russo should notify him if and when the assignors portion was received.

12. From August 9, 1983, the date that the Agreement was executed by the parties, until September 23, 1983, the date by which CTR was to submit its portion of the FCC application, there was no default or violation of the Agreement on the part of Nasco. In fact all parties, including Chambers, were performing and ready to go forward on August 22, 1983. On that date Burns and Smith, representing Nasco, visited the TV station by arrangement with Chambers. Both Chambers, sole member of the Board of CTR, and Rita Guillory, its president who later married Chambers, were present. Chambers, along with the Nasco representatives chose which of several TV announcements should be used to publicize the intended sale. Although Chambers refused to honor Nasco's request for a list of community leaders to be interviewed by Nasco to prepare its portion of the FCC application, no one contested his right or his reasons for doing so.

13. Chambers, for reasons best known to himself, decided at some time between August 22, 1983 and August 29, 1983 that he did not want to go through with the Agreement. When he called Bill Cook on the latter date (see paragraph 5 above) they talked some forty-five minutes. Chambers did not complain of the violation of any pre-August 9, 1983 understanding, any violation of the Agreement, any harassment of station operations or personnel, any difficulty with ascertainment interviews—all of which have been alleged by defendants following the institution of this suit. He simply tried to generate with Cook some terms on which he could buy out of the Agreement. Cook was adamant.

14. In Chambers' conversations and correspondence with Burns after August 29, 1983 he never once alluded to any such breaches by Nasco, he talked only of an unrelated bond problem as the reason for his admitted reluctance to file CTR's portion of the FCC application. Although he

admitted that he and CTR were bound by the Agreement (now a stipulated fact), Chambers suggested on September 7, 1983 for the first time that he (CTR) might refuse to file timely his portion of the FCC application (paragraphs 7-10 above). His (CTR's) acts after August 29, 1983 finally culminated in his (CTR's) unjustified and arbitrary refusal to file CTR's portion of the FCC application by September 23, 1983. This refusal was a deliberate violation of their obligations under paragraphs 6 and 31 of the Agreement. Their refusal or failure to file was in absolute bad faith.

15. On Friday, October 14, 1983, counsel for Nasco notified Jonathan Golden, and attorney for Chambers and CTR and an officer of CTR, that it would file suit in the United States District Court for the Western District of Louisiana in Alexandria, Louisiana on Monday, October 17, 1983, seeking appropriate relief for breach of contract and that counsel for Nasco would appear in Alexandria at approximately noon on that date to request injunctive relief to preserve the status quo by enjoining the alienation or encumbrance of the subject properties until a judicial resolution of the dispute could be obtained. This information was transmitted to Chambers through his Lake Charles attorneys.

This notice was given to the defendants Chambers and CTR pursuant to the requirements of Fed.R.Civ.P. Rule 65(b) and Rule 11 of the Local Rules of this Court which are designed to give notice to a defendant in an application for a temporary restraining order so that he may be present at the hearing and defend his interest. Chambers and his attorneys took advantage of this notice to send into motion a scheme which they have freely admitted was designed to place certain CTR properties beyond the reach and jurisdiction of this court through the medium of the Louisiana Public Records Doctrine and deprive Nasco of a

judicial determination of its rights to specific performance and still maintain CTR in possession and in a position to continue its operations without interruption.

16. Taking advantage of this notice, Chambers arranged a meeting with his Lake Charles attorneys at some time between two and six p.m. on Sunday, October 16, 1983. The attorneys prepared and Chambers executed an act of donation in trust with a corpus of $1,000.00; appointing Chambers' sister, Baker, as Trustee and naming Chambers' three adult children as beneficiaries. Both Chambers and Rita Guillory (now Mrs. Chambers) were fully aware on October 16, 1983 that the two tracts of land on which the TV station and the transmitter were located were to be sold to Nasco under the agreement of August 9th. Yet, contemporaneously with the drafting of the Trust, Chambers, the sole member of the Board of Directors and the sole stockholder of CTR, directed Rita Guillory, the President of CTR, to execute Warranty Deeds coveying the two tracts to Baker, Trustee, for a recited consideration of $1.4 million dollars represented by an unexecuted note in that amount. The president of CTR complied, as directed.

17. On the evening of Sunday, October 16, 1983, Chambers phoned his sister, Baker, and informed her of the creation of the Trust and that it was his wish that she act as Trustsee. He did not refer to the duplicate deeds which had been executed by Rita Guillory on behalf of CTR. After she consented to be Trustee, Chambers told Baker, that he would be coming to Birmingham, Alabama the next day to have her sign some documents.

18. The deeds were recorded at 8:30 a.m. on Monday, October 17, 1983; with none of the consideration having been paid, with the note still unsigned, and with CTR still in undisturbed possession despite the recordation of the

credit sale deeds. All this was accomplished at the sole direction of Chambers.

19. Late on the morning of Monday, October 17, 1983, Nasco's counsel appeared before us in Alexandria and filed its complaint against CTR and Chambers seeking as part of the relief against those parties specific performance of the Agreement and a Temporary Restraining Order (TRO) to enjoin those parties from alienating or encumbering the properties covered by the Agreement. Mr. Gray, one of the Lake Charles counsel for CTR and Chambers, had requested by a telephone call to the Clerk of Court's office that morning that he be informed when Nasco's counsel arrived. We personally called Mr. Gray, informed him that Nasco's counsel had stated to us that notice had been given of the injunctive relief sought by Nasco and that they could not account for Mr. Gray's absence. Mr. Gray did not plead surprise or lack of notice. Had he done so, we, considering the substance of the relief sought, would have delayed action until Mr. Gray could be present. This was not considered, however, because Mr. Gray stated that he did not intend to be present and that he was making no statements or representations on behalf of his client. However, he did participate fully in the conference. We informed him of the nature of the injunctive relief sought, read to him verbatim, the Order suggested by Nasco and solicited comment from him. After further discussion with Mr. Gray and counsel for Nasco, alterations in the Order were agreed upon and the Order, incorporating these alterations, was signed by us at 1:34 p.m. A hearing for a preliminary injunction was set for October 24, 1983. Mr. Gray participated in the TRO conference by telephone as fully as he could have done if personally present, and was fully aware of the fact that the TRO was signed by us on or about 1:34 p.m. Although Mr. Gray, during this discussion, was then deeply involved in Chambers' scheme

to place the property beyond the reach and jurisdiction of this Court, he made no mention of this to the Court. Exhibit P. 1].

20. At or about 4:30 on the afternoon of Monday, October 17, 1983, after the deeds had been recorded, and after the order had been signed in Alexandria, Chambers flew to Birmingham, Alabama and met Baker at the airport. He directed her to sign the trust agreement and the $1.4 million note to CTR. She did as directed. She does not recall being told about the sale or receiving a copy of it. She signed the note without knowledge of why she was signing, what it was for, or how she was going to pay it. The corpus of the trust at that time was $1,000. Baker was given no explanation and she did not ask for any.

21. On Tuesday, October 18, 1983, the Lake Charles counsel for CTR and Chambers admitted by letter that they had recorded the duplicate deeds at 8:30 a.m. on Monday 6, October 17, 1983 and that they intentionally concealed that fact from the Court prior to and during the issuance of the TRO.

22. On Monday, October 24, 1983, we granted a preliminary injunction against CTR and Chambers, and entered a second temporary restraining order directed against Baker to prevent her from selling, transferring, or in anyway encumbering the CTR properties. Mr. Gray appeared as counsel for CTR and Chambers but denied representation of Baker. Nasco's counsel, having assumed Mr. Gray would represent her, then made attempts to contact Baker prior to the Court's issuance of the order. Failing such notice, the Court, in the interest of justice, granted such TRO against Baker, as trustee of the Facility Trust at 10:37 a.m. on October 24, 1983.

23. Chambers caused his Lake Charles attorneys to prepare a leaseback agreement from Baker, trustee, to CTR covering the same properties allegedly conveyed to Baker in the duplicate deeds of October 16, 1983. Rita Guillory signed this instrument on behalf of CTR on October 22, 1983 and forwarded it to Baker, directing her to sign and return. Baker had no notice or other reason to expect the receipt of this lease. Baker knew nothing of its terms or contents and she had no part in any negotiations. No explanation accompanied the lease; Baker had no conversation or advice with Rita Guillory, Chambers or anyone else. She simply signed and returned the lease on October 25, 1983. It is not shown in the record, even at this late date, that Baker was aware of the October 16, 1983 "sale" from CTR or the identity of the property covered by that "sale."

24. We find as a matter of fact that CTR, from a date prior to August 9, 1983 was in complete control of Chambers; that the Fidelity Trust, from the time of its inception on Sunday, October 16, 1983 and the Trustee Baker from the time of her acceptance on or about 5:15 p.m. on Monday, October 17, 1983 also were controlled completely by Chambers. This finding is based on the evidence as a whole and particularly on the following uncontroverted facts:

a. The Agreement was consummated and executed on August 9, 1983. Chambers was the sole and only participant and negotiator on behalf of CTR and himself. No other officer or employee of CTR, with the exception of Jonathan Golden, Chambers' attorney in these negotiations who was also a CTR assistant secretary, was aware that a sale of CTR properties was contemplated or that an agreement to sell had been consummated.

b. Chambers, and Chambers alone, determined at

some time prior to September 23, 1983 that CTR would not file its portion of the FCC application and that CTR has continued this refusal.

c. Chambers, and Chambers alone, determined that the CTR station and transmission properties should be sold. No corporate advantage or benefit to CTR has been disclosed or demonstrated in the sale-leaseback arrangement. Not only did he direct CTR to make the sale, he created a purchaser, the Trust, controlled entirely by him through Baker, to whom the properties were sold. He furnished the consideration to be used by the Trustee to pay for the properties in the form of rental under a lease which enabled him to maintain actual possession in CTR.

d. The duplicate acts of sale were drafted at the direction of Chambers. He specified which CTR properties were to be sold. He alone determined the amount of consideration to be paid.

e. The Trust was created by Chambers' Lake Charles attorneys at Chambers' direction. He determined the terms and conditions of the Trust, the beneficiaries, the corpus, the identity and powers of the Trustee. All of this had been done and Chambers had executed the Trust instrument prior to Chambers' telephone call to Baker at about 8:00 p.m. on Sunday, October 16, 1983 in which he sought and received her consent to become Trustee of the Trust.

f. The deed to Baker was signed by Rita Guillory on behalf of CTR between 2:00 p.m. and 6:00 p.m. on Sunday, October 16, 1983 as directed by Chambers. The president, Rita Guillory, signed the duplicate deeds simply because she had been directed by resolution of the sole director, Chambers, to do so. Neither she nor Chambers could have negotiated the sale with Baker as trustee because the Trust

did not exist and Baker had no knowledge that a trust was contemplated. Only Chambers knew.

g. When Rita Guillory signed the duplicate deeds conveying title to CTR's station and transmission sites for 1.4 million dollars, she actually received no consideration. She received no cash, no note and there was no Trustee purchaser who could sign such a note, and no money in the trust to pay the note. Nor was there a mortgage or other security to assure payment of the purchase price. CTR's attorneys, knowing all this, had the duplicate deeds recorded at 8:30 a.m. the next day. At the time these deeds were recorded the Trust had total assets of one thousand dollars. At some time after 5:15 p.m. on Monday, October 17, 1983 when the Trustee finally signed the 1.4 million dollar promissory note, the Trust assets still consisted of 1,000 dollars. Actually the monthly rental installments of $14,000 will be insufficient to pay any of the last 120 installments of the note, each of which amounts to $17,735. All of this was known by CTR, by Chambers and by their Lake Charles attorneys and none of it was a matter of concern to any of them. The reason was control. Chambers had absolute control of the Trustee Baker and of CTR.

h. When Baker accepted the trustee-ship, the deed from CTR to her, as Trustee, already had been executed by Rita Guillory on behalf of CTR. In order to accomplish Chambers' scheme, the deed was recorded without Trustee Baker's signature and at 8:30 a.m. Monday, October 17, 1983, prior to any possible consideration of Nasco's application for a TRO. At the time of recordation Baker had not yet become Trustee nor had she signed the note. She did not know that the duplicate deeds existed. Baker did not know the identity, the location, the accessibility or the extent of the properties; was not familiar with the buildings, improvements or equipment located on the properties; had no knowledge of the titles or value of the properties; had no knowledge of why it was bought or what she was to do with it; had not initiated or been approached regarding the sale; had no part in choosing the property, no part in negotiationg the sale, in setting the price or the method of payment. With no concern regarding her means of payment or the value of the property described in the deeds, she signed a note in favor of CTR for 1.4 million dollars and delivered it, as instructed, to Chambers. Chambers had not mentioned the sale or the note in his telephone conference with her on Sunday night. He gave her no such information or explanation on Monday, October 17, 1983 in Birmingham and she requested none. According to her testimony she signed simply because her brother would not have directed her to do so if he was not going to arrange a means of payment.

i. Chambers caused the Trust to be drawn assigning to Trustee Baker unlimited power to sell:

. . . . . .

5.1 *Powers.* The Trustee shall possess the following powers with respect to each trust.

. . . . . .

F. *Sale or Other Disposition.* The Trustee may sell, exchange, redeem, mortgage, pledge, lease (as lessor), or otherwise dispose of any productive or unproductive property of the trust estate, at public sale, private sale or otherwise; for cash or other consideration; payable at the time of the disposition or on credit. The lessee may abandon trust property that the Trustee determines does not warrant protection.

. . . . . .

Thus Chambers, thru Baker, can revest title of the properties in CTR at such terms and on such considerations as he may choose.

j. The lease provides that CTR shall pay all utility bills and other similar charges, and ad valorem, sales and other taxes and assessments (Para. 3). CTR assumes responsibility for all "basic structural defects in the immovables, to include the foundations, walls, roof, windows and doors . . . and all other repairs, not withstanding the provisions of the Louisiana Civil Code to the contrary." (Para. 4). CTR agrees "to defend, indemnify and save Lessor harmless from all claims" for personal injury or property damage occurring on the premises during the term of the lease (Para. 7). CTR is bound to provide and maintain at its expense Fire and Extended Coverage Insurance and Owners', Landlords' and Tenants' Liability Insurance with such coverage and in such amounts as CTR deems appropriate so long as the amounts equal or exceed minimums specified in the lease (Para 8). Baker does reserve the right to approve the location and design of any exterior sign or the addition by lessee of any improvements to the property. (Para. 14). This reservation is mere window dressing to a lessor who was completely ignorant of the exterior or improvements when the lease was executed and has never visited the premises since. The evidence establishes that it was never intended that Baker would exercise any rights reserved by Chambers to her under the leaseback agreement and that she never has and never will unless directed to do so by Chambers.

The lease is a month to month lease terminable by either party on notice given the other 10 days before the lapse of any month. It can be terminated also at lessor's option upon CTRs failure to perform certain obligations of the lease.

It is quite obvious that Baker is ignorant of the terms of the lease because, in complete violation of her fiduciary responsibilities, she paid from Trust funds in her special account the 1984 ad valorem taxes in the amounts of $6,488.90 to Wayne F. McElween, Sheriff & Tax Collector (of Calcasieu Parish); $2,664.35 to City of Lake Charles and $6,272.04 to Dallas Cormier, Sheriff and Ex Officio Tax Collector (Jefferson Davis Parish). CTR was obligated under the provisions of the lease (Para. 3) to pay this $15,429.29 and Baker has never protested CTR's failure to do so or demanded reimbursement from CTR. She is personally liable to the beneficiaries for the payment of this $15,429.29 from Trust funds.

k. Baker, in all her acts, was under the complete control of Chambers. She performed without question or inquiry every act which he instructed her to perform. In fact every discretionary act performed by her as Trustee, except routine ministerial acts like paying bills, was programmed by Chambers. All she had to do was sign. Several remarks in her testimony are especially enlightening:

"Q: So you don't remember when you first saw the deeds?

"A: No, sir, I don't right now.

"Q: The one million four hundred thousand dollars, you had nothing to do with fixing that price of course?

"A: No, sir.

"Q: And if Mr. Chambers had put on that deed two million dollars or ten million dollars, that would have been okay with you?

"A: I would have accepted it. I would have assumed that he knew what he was doing.

"Q: So you Mabel Christine Baker, had no input in fixing the price?

"A: No, sir.

"Q: And you had no input in determining what property would be included in the deed, did you, ma'am?

"A: No sir.

"Q: In other words, it could have been property in Alabama or property in Freeport, Texas?

"A: No, my brother wouldn't do that.

"Q: Well, no, as long as he owned it?

"A: Uh-huh, that's right.

"Q: But it didn't matter to you what the property was was my question; is that correct?

"A: If that property was to be for a trust fund for his children, then I was willing to accept.

"Q: Sure, But my question is, as long as Mr. Chambers decided that the property—whatever property he decided would go into the deed, that was all right with you?

"A' If it were legal. (Tr. pp. 41-42)

. . . . .

"Q: I understand. But the point is, at the time of the signing of the trust and the note and the acceptance of the deeds or whatever, you didn't know how many acres were involved at that time?

"A: Well, I figured that my brother knew and that he—when he asked if I would do it and I accepted what he had to say about it. (Tr. p. 44)

. . . . .

"Q: And when you signed the note for one million four hundred thousand dollars, you did not ask Mr. Chambers, Russ, how am I going to pay this note?

"A: No, sir, I didn't. Because I figure that he would not

have his sister or would not ask her to be a trustee of a trust without making some provisions to handle the situation." (Tr. p. 46)

. . . . .

"Q: Who made the decision to lease that property to the television station?

"A: I would have no way of knowing unless it came from Mr. Chambers.

"Q: I see. In other words, Mr. Chambers—

"A: If he set up the trust, I would suppose he'd lease the property.

"Q: Now, Mr. Chambers or Mrs. Chambers or somebody representing them sent this lease to you and said, Mabel, please sign it?

"A: The lease was sent to me, there was a note that says sign, and that was no—and no explanation.

"Q: And who sent that note?

"A: That came from Ms. Guillory at that time.

"Q: And it simply said sign this?

"A: Right.

"Q: Did it say anything about sending it back?

"A: I read it—and returned. And I read it, had it notorized, and returned.

"Q: You didn't call Ms. Guillory to find out any more about it? It didn't concern you?

"A: Yes, it concerned me. But I didn't get any call for any any explanation. You know, sometimes you feel like that if you are put in a position of a trust, that you should try to handle things yourself whether you make mistakes or not. So I tried to handle this myself." (Tr. pp. 47-48)

We find that Baker has exhibited no discretion of her own, that she has shown no fiduciary responsibility in her acts as trustee. She will perform any act or acts directed by Chambers without question and without any consideration of why. She feels that the trust corpus is his property for his children and she should do exactly what he directs.

25. The duplicate deeds were modeled after the ordinary formulary forms[1] with several alterations or lack of alterations, which might be significant since the deeds were signed only by the vendor, CTR.

a. It was not an authentic act, but a private act duly acknowledged.

b. The usual title "CASH SALE" is changed to "WARRANTY DEED".

c. Although possession of the property was not delivered to the alleged purchaser at the time of execution of the deeds or at the time of recordation the word "DELIVER" was not deleted from context of "GRANT, BARGAIN, SELL, ASSIGN, CONVEY AND DELIVER".

d. The deed states: "This sale is made for and in consideration of the sum of ONE MILLION FOUR HUN DRED THOUSAND AND NO/100 ($1,400,000.00) DOLLARS".

e. The recitation of consideration is always followed by the works "cash in hand paid, receipt of which is hereby acknowledged" or words of similar effect.

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[1] A Basic Louisiana Notary Guide by James D. Johnson, Jr.; Louisiana Notarial Manual by M. Truman Woodward Jr; Louisiana Civil Practice Forms by Roger M. Denton.

f. Where, as here, a note was received, the consideration must be described as a note and the sale is then a credit sale.

g. We find, as a matter of fact, that these alterations in the duplicate deeds were made at the direction of Chambers deliberately and for the purpose of deceiving those members of the public relying on the public records that the property had been delivered to the purchaser and that the consideration had been paid in cash, when in fact there was no delivery or consideration.

26. Chambers and CTR had notice on Sunday, October 16, 1983 of Nasco's intent to file its complaint against Chambers and CTR seeking specific performance of the Agreement and a TRO to preserve the status quo. They knew that a hearing in Alexandria on the TRO application was set for the late morning or noon on Monday, October 17, 1983. This knowledge precipitated the implementation of a plan previously devised by Chambers, CTR and their Lake Charles counsel, to place the CTR properties on which the TV station and the transmission facilities are located beyond the reach and jurisdiction of the court and contemporaneously therewith to retain such properties in possession of CTR for its continued operations and control.

27. The sole and only reason for the creation of the trust on October 16, 1983 was the implementation of the plan to prevent specific performance of the Agreement and to continue CTR in possession of the property. If, as Chambers testified, he had previously mentioned such a trust to others, had sought legal advice, why had he not confected the trust before? What changed the situation now to make it more attractive to him on a Sunday, the eve of the TRO conference? He admitted that he had other

properties more appropriate to put in trust. Why did it have to be done so hastily? We find that under the circumstances here no trust would have been made and no property "transferred" if Chambers (CTR) had not previously been informed that Nasco would file this suit the next day.

CONCLUSIONS OF LAW

1. Notice, under the facts in this case, is not an issue. Mr. Gray, counsel for Chambers and CTR, participated in the Alexandria hearing by telephone and as fully as if he were present. He was informed in detail and was certainly aware of the relief sought; the profered temporary restraining order was read to him verbatim; the modifications suggested by him were considered and adopted. His participation on behalf of his clients waived any need for notice. The temporary restraining order issued by this court at 1:34 p.m. on October 17, 1983 was legal and valid.

2. We accept defendants' stipulation and find that the Agreement of August 9, 1983 was a valid and enforceable contract as of the date of trial.

3. By virtue of this stipulation, the defendants waived and withdrew all allegations of breaches of the Agreement on the part of Nasco which they previously asserted by way of counterclaims and affirmative defenses, and conceded all facts necessary to the resolution of Nasco's claim for specific performance, reserving for adjudication only the question of the effect of the recordation of the October 16, 1983 conveyance from CTR to Baker trustee.

4. We accept defendants' stipulation that the failure of Chambers and CTR to file CTR's portion of the FCC application on or before September 23, 1983 constituted a default of the Agreement by Chambers and CTR.

5. Nasco has performed its contractual obligations under the Agreement in good faith and to the fullest extent possible. It has at all times and presently is ready, willing and able to perform its obligations to the completion of the contract.

6. Specific performance:

a. Paragraph 16(a) of the Agreement provides in pertinent part:

> "In the event of the failure of Seller to Close the transactions contemplated herein, . . . Buyer . . . may terminate this Agreement and sue for money damages *or elect to continue this agreement and sue for specific performance and/or damages.*" (emphasis ours)

b. LSA-CC 1986 provides:

> "Upon an obligor's failure to perform an obligation to deliver a thing, or not to do an act, or to execute an instrument, the court *shall grant specific performance* plus damages for delay *if the obligee so demands.* If specific performance is impracticable, the court may allow damages to the obligee." (emphasis ours)

Specific performance is the mandatory remedy when demanded by the obligee. Nasco is entitled to such relief as a matter of right; it is not granted simply at the Court's discretion. *J. Weingarten, Inc. v. Northgate Mall, Inc.*, 404 So.2d 896, 900-01 (La.1981); *Bolin Farms v. American Cotten Shippers Ass'n*, 370 F.Supp. 1353, 1360-65 (W.D.La.1974).

This is an action to enforce specific performance of a contract to sell and transfer a TV license and facilities.

Federal courts have not hesitated to grant specific performance of such contracts. *Wooster Republican Printing Co. v. Channel Seventeen, Inc.* 682 F.2d 165 (8th Cir.1982) (*per curiam*), *aff'g Wooster Republican Printing Co. v. Channel 17, Inc.*, 533 F.Supp. 601 (W.D.Mo.1981); *Hawaiian Paradise Park Corp. v. Friendly Broadcasting Co*, 414 F.2d 750 (9th Cir.1969), *aff'g Friendly Broadcasting Co. v. Hawaiian Paradise Park Corp.*, 282 F.Supp. 464 (D.Hi.1967); *Field v. Golden Triangle Broadcasting, Inc.*, 451 Pa. 410, 305 A.2d 689 (1973); *Times-Journal, Inc. v. Jonquil Broadcasting Co.*, 226 Ga. 673, 177 S.E.2d 64 (1970).

We conclude under these principles that Nasco is entitled to the remedy of specific performance unless that remedy under the facts of this case is impracticable.[2]

7. This Court has full and inherent power to restore the status quo; *Porter v. Lee*, 328 U.S. 246, 96 S.Ct. 1096, 90 L.Ed. 1199 (1946); *Jones v. SEC*, 298 U.S. 2, 56 S.Ct. 654, 80 L.Ed. 1015 (1936); *Texas & New Orleans R.R. Co. v. Northside Belt Ry. Co.*, 276 U.S. 475, 48 S.Ct. 361, 72 L.Ed. 661 (1928); *FTC v. Weyerhauser Co.*, 648 F.2d 739 (D.C.Cir.1981). We have, therefore, the power to restore

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[2] The defense of impracticability as asserted by the defendants assumes that if the October 16 conveyance cannot be pierced, the Purchase Agreement cannot be specifically enforced.

That assumption is simply wrong.

It has long been recognized, in Louisiana and elsewhere, that where only part of a contract is susceptible of specific performance, a court of equity will specifically enforce that part. *In re Canal Bank & Trust Co.*, 221 La. 184, 59 So.2d 115, 119-20 (La.1952((per curiam on application for rehearing); *Longino v. Webb Press Co.*, 60 So. 707, 711, 716 (La.1912); *Big State Barging Co. v. Calmes*, 138 F.Supp. 891, 892 & n. 3 (E.D.La.1956). *Cf.* La.Civ.Code art. 2455. Thus, it is clear that Louisiana recognizes and accepts the principle that partial specific performance, with a concomitant reduction in purchase price, may be granted.

the status quo in effect at the time that Chambers and CTR became aware that a temporary restraining order would be sought by Nasco on Monday, October 17, 1983. We have found as a matter of fact that they had this knowledge on or before 2:00 p.m. on Sunday, October 16, 1983.

8. Chambers has admitted repeatedly that the trust-sale-lease operation was a deliberate, planned scheme to place the CTR properties beyond the reach and jurisdiction of this Court while maintaining continued and uninterrupted possession of the properties in CTR. Neither the trust nor the duplicate deeds had been drafted prior to Sunday, October 16, 1983. However, on that date Chambers had full knowledge and notice of the scheduled appearance (noon Monday, October 17, 1983) before this Court to consider NASCO's application for a TRO. This notice was given as required by F.R.Civ.P. rule 65(b) and Local Rule 11 so that Chambers and CTR might have the opportunity to appear and oppose the application. These defendants have emasculated and frustrated the purposes of these rules and the powers of this Court by utilizing this notice to prevent NASCO's access to the remedy of specific performance.

It is also uncontroverted that Mr. Gray, because of his participation in the TRO appearance had full, complete and actual knowledge and notice, as the attorney for Chambers and CTR in this lawsuit, of the issuance of the TRO at about the time it was issued, i.e., 1:34 P.M., Monday, October 17, 1983. In addition, Mr. Scofield, a counsel for NASCO, personally served a copy of the TRO on Mr. Gray at 5:00 P.M. Monday afternoon. The only purpose for Chambers' trip to Birmingham was to complete and perfect the sale of the CTR properties by securing the signature of his sister, Baker, on the trust instrument and on the 1.4 million dollar note. In doing this he was acting on behalf of

CTR as well as himself. We hold that where, as in this case, the attorney participated in the TRO appearance on behalf of Chambers and CTR, those parties are bound by the acts of their lawyer agent and are considered to have notice of all facts, notice of which can be charged upon the attorney, F.R.Civ.P. 65(d); *Smith v. Ayer*, 101 U.S. (11 Otto) 320, 25 L.Ed. 955; *Link v. Wabash R. Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962), reh. den., 371 U.S. 873 S.Ct. 115, 9 L.Ed.2d 112; *Orgeron v. Mine Safety Appliances Co.*, 603 F.Supp. 364 (E.D.La. 1985). Since the presentation of these instruments to Baker for her signature was for the purpose of completing the transfer specifically prohibited by the TRO, Chambers' act of presentation, occurring as it did after his attorney's knowledge of the issuance of the TRO, was an absolute violation of that order.

On October 22, 1983 Rita Guillory, on behalf of CTR, lessee, executed a lease-back agreement and sent the agreement to Baker, the lessor, for her signature without any explanation whatsoever. The instrument covered the properties which had been conveyed by CTR to Baker on October 16, 1983 and provided for rental of $14,000 payable monthly in advance. This lease had two effects necessary to ratify and complete the alleged sale from CTR on October 16, 1983. it is an uncontroverted fact that delivery of possession of the properties to Baker was never made. This lease had the effect of giving Baker constructive possession of the properties as a lessor. It is also uncontroverted that the trust had no resources or income to pay the purchase price of 1.4 million dollars. This lease provided the only funds available to the trustee, Baker, for the payment of that consideration. Both of these effects are in aid of and necessary to the validity of the alleged sale of October 16, 1983. It is an uncontroverted fact that Chambers and CTR had personal knowledge and notice of issuance of the TRO prior to October 22, 1983. The execution of this lease by

CTR at the direction of Chambers is an act in aid of and necessary to the validity of the deed executed by CTR on October 16, 1983. As such, this act is specifically prohibited under the TRO and is in absolute violation of that order.

9. A simulated sale is an absolute nullity which conveys no title, and which may be set aside by the courts at any time, at the demand of any interested party. *Succession of Terral*, 312 So.2d 296, 299 (La.1975). The Public Records Doctrine cannot invest a simulation with substance and validity, and cannot protect it from rescission. *E.g., Smith v. Smith*, 239 La. 688, 119 So.2d 827, 832 (1960).

Louisiana law establishes a rebuttable presumption that a transaction is a simulation, and thus without substance or legal effect, under either of two circumstances.

The first occurs when the seller retains property ostensibly sold. *Boagni v. Waterbury*, 403 So.2d 856, 859 (La.App. 3d Cir. 1981); *Ingram v. Freeman*, 326 So.2d 565, 566 (La.App. 3d Cir.), *writ denied*, 329 So.2d 755 (La.1976), La.Civ.Code art. 2480.

> *Presumption of simulation by retention of possession by seller.* In all cases where the thing sold remains in the possession of the seller, because he has reserved to himself the usufruct, or retains possession by a precarious title, there is reason to presume that the sale is simulated, and with respect to third persons, the parties must produce proof that they are acting in good faith, and establish the reality of the sale." La.Civ.Code art. 2480.

The second occurs when the party alleging the simulation

shows circumstances which cast doubt or suspicion on the reality of the transaction. The classic "suspicious circumstances" identified by the courts of Louisiana would include: (1) conveyance to a close friend or relative; (2) timing close to an impending lawsuit, or other circumstances suggesting a desire to place the property out of reach; (3) lack of, or doubtful consideration; (4) retention of possession by the seller; and (5) lack of inspection and knowledge of the property by the vendee. *See, e.g., Smith v. Smith, supra,* 119 So.2d 831-32; *Williams v. Smith,* 340 So.2d 401, 402-03 (La.App. 3d Cir. 1976); *Ingram v. Freeman, supra,* 326 So.2d at 576-78; *Beatty v. Beatty,* 186 So.2d 855, 859-61 (La.App. 1st Cir. 1966); *McDade v. Green,* 157 So. 275, 277-78 (La.App. 2d Cir. 1934). All five of the classic circumstances occur in the instant sale.

We have noted previously, Finding of Fact 28, that the specially drawn duplicate deeds recite that the properties were delivered by CTR to Baker when, as we have already noted, no delivery was made. More significant is the fact that the duplicate deeds are given the more innocuous title "warranty deed" rather than the more precise title "cash sale" or "sale and mortgage". Consequently this leaves it up to any third-party examining the record to determine what type of sale is represented and thus what law is applicable to it. This is a cash sale because the consideration is recited in *dollars.* Not a note, *dollars.* Finding of Fact 25. The words "cash in hand paid, *receipt of which is hereby acknowledged*" or words of similar import are necessary as a certification by the signing vendor that he had received the purchase price. In this case no cash purchase price was ever paid. The signature of the purchaser can be omitted only in those instances where the vendor has delivered physical possession of the property and the purchaser has actually taken possession. *Megason v. Boleyn Lumber Co.,* 140 La. 431, 73 So. 257 (La.1916); *Franks v. Scott,* 191 So. 175 (La.App. 1st Cir.1939). It is

well established here that no dollars (cash) were paid, that no possession was delivered. In the absence of delivery of possession to the purchaser, the purchaser's signature was necessary. That signature is absent. In fact there is no evidence the prospective trustee purchaser had assented to the sale at the time of recordation. The deeds are absolutely null, void and of no effect. Nor could they be ratified by the acts accomplished by Chambers and CTR after 1:34 p.m. October 17, 1985 as is shown elsewhere in this opinion.

For the above reasons we hold that the duplicate deeds executed by Rita Guillory on behalf of Calcasieu Television & Radio, Inc. on October 16, 1983-and recorded on October 17, 1983 in Conveyance Book 1771, p. 465, File No. 1774481 of the records of Calcasieu Parish, Louisiana and in Conveyance Book 561, p. 538, File No. 446829 of the records of Jefferson Davis Parish, Louisiana are null, void and of no effect.

10. *Third-party purchaser under the Public Records Doctrine.* under Louisiana law, there could be no valid sale without a purchaser who has knowledge of the transaction, who consents to the object sold and to the purchase price at the time of or prior to the execution of the instrument embodying the sale. La.Civ.C. art, 2456; *McDade v. Green,* 157 So. 275 (La.App. 2nd Cir. 1934); La.Civ.Code art. 2456; Baker cannot qualify as a third party purchaser as contemplated under the Public Records Doctrine. That doctrine does not give validity to an invalid sale, it merely protects a valid sale. At the time of recordation Baker had no knowledge of the value, extent or location of the properties described in the alleged deeds, did not know the purchase price and had not consented to the alleged sale. She had not been consulted, she had no part in the negotiations leading up to the sale. In fact, she had no knowledge that the sale had taken place.

Chambers' own testimony at trial conclusively establishes that the trust was created and that Baker was vested as trustee, for the sole express purpose of generating a Public Records Doctrine defense to the specific enforcement of the agreement of August 9, 1983. A purchase literally created by his seller for the sole purpose of defeating the contractual rights of another cannot be considered a third-party purchase for the purpose of raising the Public Records Doctrine as a shield.

It is well established under Louisiana law that party interposed by his vendor for the express purpose of raising the Public Records Doctrine as a shield cannot be considered a third-party purchaser for that reason. *Burns v. Jolley*, 153 La.212, 95 So.648 (La.1923). *See also First Nat'l Bank of Ruston v. Mercer*, 448 So.2d 1369 (La.App. 2nd Cir.1984).

11. *Impracticability.* Specific performance in this instance is not impracticable. As shown above, the sale instrument as recorded was null, void and of no effect. That the entire series of transactions was a meaningless paper exchange between Chambers, Chambers (CTR), and Chambers (Baker); it was a checker game in which Chambers made all the moves for CTR and all the moves for Baker. He himself has admitted that all of it was done for the sole purpose of defeating specific performance of the agreement entered into by him and CTR with Nasco on August 9, 1983. All the acts done subsequent to the recordation of the sale and which might have the effect of ratifying, confirming or curing the deficiencies in that sale were done after the TRO became effective against the persons engaged in those acts are, therefore, in violation of that order and are subject to cancellation along with the deeds recorded on October 17, 1983.

CONCLUSIONS

We find that Nasco is entitled to be restored to the status quo existing prior to the recordation of October 17, 1983 and to specific performance of the Agreement of August 9, 1983, and to judgment ordering that defendants Chambers and CTR perform expeditiously and in good faith all the obligations assumed by them in said Agreement; ordering further that Chambers and CTR file, on or before ten (10) days after judgment of this Court CTR's portion of the application to the FCC for the transfer of the license and the cooperation in good faith in proceedings before the FCC to achieve the transfer of license; ordering further that CTR produce and cancel the 1.4 million dollar note and deposit the cancelled note in the record of this proceeding on or before ten (10) days after judgment of this Court; ordering further that the Clerks of Court of Calcasieu Parish and of Jefferson Davis Parish cancel and erase from the Conveyance Records of each parish the deed from CTR to Baker, Trustee, executed October 16, 1983 and the lease agreement executed by Baker, Trustee, on October 25, 1983 and by Rita Guillory on behalf of CTR on October 22, 1983; ordering further the performance of any and all other acts which may be necessary to restore the status quo prior to the recordation of October 17, 1983. Said order is to be binding on Chambers and CTR, their officers, agents, servants, employees and attorneys, and upon those persons in active concert of participation with them who receive actual notice of the order by personal service or otherwise.

Plaintiff should submit a form of judgment in conformity with the above on or before ten (10) days from date hereof.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Filed DEC 22 1985

NASCO, INC.

-vs- : CIVIL ACTION
NO.83-2564

CALCASIEU TELEVISION &
RADIO, ET AL

RULING ON MOTIONS FOR STAY

All three defendants have filed Motions to Stay Execution of our Judgment of November 27, 1985 (242, 243, 244).[1] The motions, in principal part, are DENIED.

We see no reason to repeat here any of the findings and conclusions outlined in our Opinion of November 8, 1985 or the conclusions and authorities submitted by NASCO, Inc. (NASCO) in its well reasoned memorandum of authorities (245) which we adopt as our reasons for this Ruling with the following additional comment.

Not only have defendants failed to make a showing of the four essential elements necessary to entitle them to the issuance of a stay but there are compelling additional reasons for denying the stay.

(1) That defendants are likely to prevail on the merits of the appeal.

The record will reflect that this is a very simple case, that the Buy and Sell Agreement (Agreement) was executed by NASCO, G. Russell Chambers (Chambers), and Calcasieu Television and Radio, Inc. (CTR) on August 9, 1983; that, in addition to the sale of facilities and the FCC license to NASCO, it provided that the parties would cooperate and utilize their joint efforts to complete the sale as soon as possible; that time was of the essence; that a joint application to the FCC for the transfer of the license

would be filed no later than September 23, 1983. To further assure performance of the contract it was specifically provided that each party had the right of specific performance. Yet before the month of August 1983 elapsed, Chambers, acting on behalf of himself and CTR, attempted to buy out of the Agreement; failing in this attempt he became unresponsive to NASCO's efforts to consummate the Agreement, citing repeatedly a failed bond issue problem of his own which had no connection whatsoever with the Agreement, although Chambers acknowledged that he and CTR were legally bound under the Agreement to submit CTR's portion of the application for transfer on September 23, 1983, they failed to do so. This failure slowly solidified into refusal and finally NASCO notified defendants' Atlanta attorneys (Chambers' Lake Charles attorneys had no part in negotiating the Agreeement) that NASCO would file suit in federal court in Alexandria October 17, 1983 seeking specific performance and injuctive relief. Defendants have continuously contested the adequacy of that notice. If that is true, then it is by lucky happenstance and coincidence that Chambers induced his Lake Charles attorneys to come to their office on the afternoon of Sunday, September 16, 1983, and to draft a trust in favor of his three children as beneficiaries and having a corpus of $1,000.00. They urge that the following series of events occurred on Sunday, October 16, 1983 without knowledge by CTR, Chambers, or their attorneys that NASCO had given notice that they would file suit for injunctive relief on the morning of Monday, October 17, 1983. The conversation recited below between the Chairman of the Board of CTR and Chambers did not actually occur since Chambers was Chairman.

Suddenly on Sunday, October 16, 1983 it occurred to CTR's Chairman of the Board and to its President that the corporate interest of CTR would be best served by selling its principal operating properties, not their license, to some third party other than NASCO.

Although it was Sunday, they contacted their

attorneys in Lake Charles and discovered that these attorneys also represented a Mr. Chambers, who had just confected a trust possessing uncommitted assets of $1,000.00 in cash, that the Trustee had not yet been named but that Mr. Chambers has in mind a very capable and experienced business woman named Baker who was a college graduate with a Bachelor of Science, who worked for years for the State of Alabama and was the administrative head of her state agency in Birmingham prior to her retirement a few years before. Thereupon, the attorney hands the phone to Mr. Chambers and the following conversation ensues:

> Chairman: Mr. Chambers, I am the Chairman of CTR. We have decided to sell the principal operating properties of our company and thought that your trust might be interested in such a sale.
>
> Chambers: Yes, I'm familiar with the property, it's a solid single purpose facility and I'm sure that Mrs. Baker, the trustee that I have in mind, will be able to see the advantages of the trust owning a TV station and a transmitting tower, both in good condition and ready for use.
>
> Chairman: But we're certainly not going to sell the properties for $1,000.00?
>
> Chambers: Certainly not. I'm familiar with the properties and I propose a purchase price of 1.4 million dollars.
>
> Chairman: But the trust doesn't possess 1.4 million dollars, does it?
>
> Chambers: The Trustee will sign a note.
>
> Chairman: Oh, a sale and mortgage, we must have security.

> Chambers: We can't agree to a sale and mortgage. That would require the signature of the Trustee on the deed. The Trustee lives in Birmingham, Alabama and we could never get her signature in time to record the deed in time to be the first recorded instrument in the Clerk of Court's office tomorrow morning. Therefore, it will have to be in the form of a Cash Sale.
>
> Chairman: But you are proposing a 100% credit deal for 1.4 million dollars. If I am getting just a note, how can it be handled as a cash sale?
>
> Chambers: That's just a matter of recordation. It's the strong policy of the State of Louisiana. Ask your attorneys, uh -- I mean our attorneys.
>
> Chairman: Look, Mr. Chambers, like I said, I don't see how we can handle this as a Cash Sale when CTR is receiving a note. And I certainly can't vacate and deliver these premises by tomorrow morning. What's the big hurry anyway?
>
> Chambers: All we have to do is use the usual Cash Sale form and insert the consideration as 1.4 million dollars.
>
> Chairman: Yes, I'm familiar with that form. In the Cash Sale forms I've seen the recited consideration is followed by some kind of language as "cash in hand paid, receipt of which is hereby acknowledged" or words to that effect. CTR can't acknowledge receipt of 1.4 million dollars cash.
>
> Chambers: Look, I've talked this over with our attorneys. We're drafting a warranty deed based on a conventional Cash Sale form and leaving out the language by which CTR would acknowledge receipt of cash. This way you would not be making such an acknowledgement; there would be a

mere implication. The public would imply delivery of the purchase price even though CTR has not specifically acknowledged such receipt. It's just a matter of recordation. It's the very strong public policy of the State of Louisiana our attorneys tell me despite any actual delivery of the property or the stated purchase price or the claims of fraud or collusion between the parties. That's the law. That's the strong policy of the State of Louisiana.

Chairman: Listen - I know something about these matters. I haven't even talked to Mrs. Baker. She doesn't know what property has been sold or the price she is expected to pay. How can there be agreement on these matters when I haven't even talked to her, and she doesn't even know that there is a sale? She has to be a purchaser in good faith and buy a valid deed, I do not have to talk to our attorneys to know that. She doesn't know that I have made an offer and I do not know that she has accepted.

Chambers: Can't you understand? It's just a matter of recordation. Just a matter of recordation. If we record the deed, she's automatically a purchaser in good faith.

Chairman: Well I still don't understand why we can't recite it like it is; that CTR gets a note and that CTR gets the security of a mortgage. Why shouldn't I talk to the Trustee? Why shouldn't she sign the deed if she's willing to sign the note? Why is it so damn important that the transfer be recorded as soon as the Clerk's Office opens tomorrow morning?

Chambers: Look, do you want the deal or don't you?

Chairman: Well, how am I going to explain to my shareholders?

Chambers: Look, Bub, I *am* your shareholders.

Chairman: Well, it still looks a little fishy to me.

(end of scenario)

It suffices to say that the deed from CTR to Baker was null and void for lack of delivery of possession to the vendee and lack of delivery of consideration to the vendor. This was true at the time that the deed was recorded on or about 8:30 a.m. on Monday, October 17, 1983. It was true when attorney Gray received notice of the issuance of the TRO at the conclusion of the hearing on or about 1:34 p.m. on the same day. It was true when Chambers, by his own admission, had notice of the TRO on Tuesday, October 18, 1983. The deed called for dollars, that is cash. A worthless note is not the equivalent of cash. The lease executed on October 25, 1983 was an attempt to cure these deficiencies in the Cash Sale and were acts in violation of the TRO against Chambers and CTR issued by this Court on October 17, 1983. Defendants have no likelihood of success on appeal.

(2) Defendants will be irreparably injured if the stay is not granted.

Defendants argue that key employees will be replaced and others may lose their jobs, that station policies may be changed. It should be observed that it was Chambers and CTR, not this Court, that signed the Agreement. It was their decision to sell the station.

(3) Possibility of substantial harm to other parties to the litigation.

Defendants, since the very beginning of this trial, have relied completely on tactics of expense and delay - a series of contrived defenses, each of which consumed its own expenditure of time and money for trial. They appear

in endless succession limited only by their attorney-architect's ability and imagination to think of them. A partial list includes first and most importantly the alleged sale from CTR to Baker-Trustee. Next, the refusal to allow the examination of files and records, etc. by NASCO which provoked a lengthy contempt proceeding. Next, the alleged violation by NASCO of the conditions of a pre-August 9, 1983 verbal agreement recalled only by Chambers and not mentioned in the August 9th agreement or anywhere else; next were numerous alleged defaults by NASCO previous to September 23, 1983; next a series of depositions of the officers of various financial institutions and other companies with which NASCO had done business which became so numerous as to draw the attention of the court and none of whom have been called upon to testify; then mandamus; then attempt at recusal of the Court; then a series of requests for continuance by Chambers and by his counsel. The first two were granted. But when it became apparent that this was part of the continuing tactic of delay, they were refused.

It has been pointed out previously that this is a simple case - specific performance of the August 9, 1983 agreement between NASCO, CTR and Chambers. It is stipulated by the parties that the Agreement was legal, valid and enforceable on September 23, 1983. It has been stipulated that Chambers and CTR breached that agreement when they failed or refused to submit CTR's portion of the joint application to the FCC for the transfer of the license. Defendants have admitted repeatedly that the reason for the sale from CTR to Baker, Trustee, was to deprive NASCO of their right of specific performance as provided in the Agreement and the laws of the State of Louisiana. From the filing of the original answer, the sole issue has been whether the sale by CTR is protected by the Public Records Doctrine of Louisiana. The pleadings alone to this date filled fourteen volumes of the record. The documentary evidence is equally voluminous. The August agreement set a specific date for submitting the joint

application for transfer to the FCC. It required in detail the cooperation of Chambers, CTR and NASCO and stated, again specifically, that time was of the essence. On August 9, 1983 the parties contemplated the completion of the entire sale in a period of a few months.

Two and a half years and fourteen volumes of trial court pleadings later, after this case has been exposed three times to the appeal court, after all the evidence is in, all authorities submitted, an Opinion and Judgment has been rendered granting specific performance and ordering defendants Chambers and CTR to cooperate and to perform their obligations under the admittedly legal and enforceable Agreement, defendants seek a stay so that Chambers and CTR may remain in control and operation of the license and the properties and achieve additional delay and expense to plaintiffs by conducting a flanking attack against NASCO through petitions to the FCC. This matters surfaced originally after the issuance of our November 8, 1985 Opinion. See the following letters following the Minute Entry (239) being among the last filings in the rear of Volume 13 of this record, letter from A. J. Gray, III to this Court dated November 18, 1985 with attached letter from John B. Scofield to Mr. A. J. Gray, III dated November 12, 1985, and another attached letter from Stanley S. Neustadt to A. J. Gray, III, Esq. dated November 14, 1985. It is more clearly outlined in the letter from A. J. Gray, III to this Court dated December 12, 1985 (247), letter from David L. Hoskins to this Court dated December 13, 1985 (248), and letter from this Court to Mr. Gray dated December 20, 1985 (249). It is submitted that this red herring has a potential of unlimited additional time, effort and expense. NASCO would be seriously, substantially and irreparably harmed by the issuance of a stay.

(4) the granting of a stay would serve the public interest.

The argument here is simply that Mr. and Mrs. Chambers are indispensable to the operation of the station.

To this we point out again that Chambers and CTR, not this Court, signed the Agreement. It was their decision to sell the station. It was not against public policy at that time nor is it so at present.

CONCLUSION

We stay therefore until further orders of this Court that portion of Paragraph XI which reads as follows: "and that the plaintiff, NASCO, Inc., shall submit the appropriate Memorandum of Costs in accordance with Rule 5(c) of the Local Rules of this Court within thirty (30) days of the entry of this Judgment." In all other respects defendants' Motions for Stay are DENIED.

Because Christmas Day is imminent, the temporary stay should not terminate until December 26, 1985 (not inclusive) and all legal delays will commence on that date.

DONE AND SIGNED at Alexandria, Louisiana, this 22nd day of December, 1985.

/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

[1] These numbers and those that follow refer to numbered documents in the record.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

FILED DEC 22 1985

NASCO, INC.
-vs- : CIVIL ACTION
CALCASIEU TELEVISION & RADIO, ET AL : NO. 83-2564

JUDGMENT

The Motions for Stay and the opposition thereto having been considered; it is

ORDERED, ADJUDGED AND DECREED that that portion of Paragraph XI of our Judgment of November 27, 1985 which reads as follows: "and that the plaintiff, NASCO, Inc., shall submit the appropriate Memorandum of Costs in accordance with Rule 5(c) of the Local Rules of this Court within thirty (30) days of the entry of this Judgment." be and it is hereby stayed until further orders of this Court. In all other respects defendants' Motions for Stay are DENIED. It is further

ORDERED, ADJUDGED AND DECREED that the temporary stay granted for the purpose of our considering defendants' Motions to Stay be terminated effective December 26, 1985, which date shall be the effective date for the commencement of all legal delays.

Alexandria, Louisiana, this 22 day of December, 1985.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed AUG 6 1986

No. 86-4003

NASCO, INC.

Plaintiff-Appellee,

versus

CALCASIEU T.V. AND
RADIO, INC. AND G.
RUSSELL CHAMBERS,

Defendants-Appellants,

MABEL C. BAKER,
TRUSTEE,

Defendant-Appellant.

Appeals from the United States District Court for the
Western District of Louisiana

(August 6, 1986)

Before JOLLY, HILL and JONES, Circuit Judges.

BY THE COURT:

The court, having considered the briefs, record and oral arguments, affirms in all respects the judgment and order of the district court.

The court is of the opinion that the issues raised in this appeal are frivolous and that damages and double costs under Fed. R. App. P. 38 should be imposed against the appellants in the amount of the costs of this appeal, including attorney fees. Accordingly, the case is remanded to the district court for a determination of the costs and attorney's fees incurred by appellees in this appeal and, additionally, for a determination of whether sanctions in the form of costs and attorney's fees should be imposed

against the appellants and/or their attorneys under Fed. R. Civ. P. 11 and against counsel for appellants under 28 U.S.C. §1927 as it relates to the proceedings in the district court.

This court reserves the right to issue an opinion in support of this order at a later time.

AFFIRMED and **REMANDED**.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed AUG 11 1986

No. 86-4003

NASCO, INC.

-vs- Plaintiff-Appellee,

versus

CALCASIEU T.V. AND
RADIO, INC. AND G.
RUSSELL CHAMBERS,

Defendants-Appellants,

MABEL C. BAKER,
TRUSTEE,

Defendant-Appellant.

Appeals from the United States District Court for the
Western District of Louisiana

(August 11, 1986)

Before JOLLY, HILL and JONES, Circuit Judges.

BY THE COURT:*

The court, having considered the briefs, record and oral arguments, affirms in all respects the judgment and order of the district court.

The court is of the opinion that the issues raised in this appeal are frivolous and that the appeal has been brought for purposes of delay. Damages and double costs under Fed. R. App. P. 38 should therefore be and are hereby imposed against. Damages will be in the amount of appellees' attorney's fees, if reasonable, expended in the prosecution of this appeal. Accordingly, the case is

* This order amends our order of August 6, 1986.

remanded to the district court for a determination of the costs and attorney's fees incurred by the appellees in this appeal. Additionally, we remand for a determination of whether sanctions in the form of costs and attorney's fees should be imposed against the appellants and/or their attorneys under Fed. R. Civ. P. 11 and against counsel for the appellants under 28 U.S.C. § 1927 as it relates to the proceedings in the district court.

This court reserves the right to issue an opinion in support of this order at a later time.

AFFIRMED AND REMANDED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-4003

NASCO, INC.

Plaintiff-Appellee,

versus

CALCASIEU T.V. AND
RADIO, INC. AND G.
RUSSELL CHAMBERS,

Defendants-Appellants,

MABEL C. BAKER,
TRUSTEE,

Defendant-Appellant.

Appeals from the United States District Court for the
Western District of Louisiana

(August 27, 1986)

Before JOLLY, HILL and JONES, Circuit Judges.

PER CURIAM:*

In our order of August 6, we imposed damages and double costs for this appeal, including attorney's fees, against the appellants under Federal Rule of Appellate Procedure 38. We remanded to the district court for determination of those amounts. We also instructed the district court on remand to consider whether sanctions should be imposed against the appellants and/or their attorneys under Federal Rule of Civil Procedure 11 and against counsel for

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

appellants under Federal Rule of Appellate Procedure 38. We remanded to the district court for determination of those amounts. We also instructed the district court on remand to consider whether sanctions should be imposed against the appellants and/or their attorneys under Federal Rule of Civil Procedure 11 and against counsel for appellants under 28 U.S.C. § 1927 for the proceedings in the district court. Finally, we noted that we reserved the right to issue an opinion in support of the order at a later time; we now issue that opinion. The district court's opinion in this case adequately reflects our view of the merits of the case. We address only our determination that damages and costs are appropriate under Rule 38 because the appeal is frivolous and dilatory.

A primary reason that this appeal is so clearly frivolous and was pursued for the purpose of delay lies in the nature of the facts, facts that the district court determined clearly and accurately. Indeed, there was virtually no disagreement on the facts, only on the conclusions to be drawn from them. The facts themselves, however, so overwhelmingly support the district court's conclusions and findings that any appeal that must characterize its factual determinations as clearly erroneous is plainly frivolous.

The frivolousness of this appeal and its dilatory purpose is further demonstrated by the bad faith shown by the appellants before and during this litigation. The validity of the purchase agreement, its unjustified breach, and the eleventh hour creation of a sham trust to avoid that agreement in the shadow of approaching legal proceedings were not contested by the appellants. These actions plainly show that the appellants intended to manipulate the legal process to escape their own voluntarily undertaken obligations.

The appellants' legal arguments were singularly unconvincing in view of the glaring facts that the arguments ignored. The arguments relied on the trust that the district court found was created for the sole purpose of avoiding

the sale to Nasco. Acceptance of this trust as valid would completely obliterate the nullity of simulations under Louisiana law. As judges, we cannot check our common sense in the robing room and allow disingenuous arguments to characterize as serious an appeal as manipulative as is this one before us.

Finally, it is obvious in the context of this case that this appeal was brought for the sole purpose of delay. These appellants have brought several previous meritless appeals and petitions before this court. Clearly, this appeal was one last shot at delaying the inevitable. Although appellants have the right to appeal, when they impose upon the other parties and upon the public an appeal like this, under Rule 38 they also have the responsibility to pay. Therefore, in accordance with our order entered August 6, the district court is affirmed and the case is remanded.

With respect to our remand to consider imposition of sanctions under Rule 11, Fed. R. Civ. P., and 28 U.S.C. 1927 in connection with the district court proceedings, we express no opinion whatsoever on the merits.

REMANDED.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

FILED AUG 07 1986

CIVIL ACTIONNO. 83-2564
NASCO, INC.

versus

CALCASIEU TELEVISION AND RADIO, INC.,
G. RUSSEL CHAMBERS and
MABLE CHRISTINE BAKER,
TRUSTEE FOR THE FACILITY TRUST

FOR PLAINTIFF:

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NAUMAN S. SCOTT
UNITED STATES DISTRICT JUDGE

OPINION

This matter is before us on a Motion for Judicial Assistance and/or Supervision filed by the plaintiff, NASCO, Inc. (NASCO).

NASCO's motion arises out of an action in diversity for the specific performance of a Purchase Agreement (the Agreement) executed on August 9, 1983. The Agreement provides for the sale and purchase of television station KPLC-TV in Lake Charles, Louisiana. NASCO is the prospective purchaser of the station. The defendants in the underlying action are Calcasieu Television and Radio, Inc. (CTR), the owner and defaulting seller of the station, and G. Russell Chambers (Chambers), the sole shareholder and sole Director of CTR, who signed the Agreement both on behalf of the corporation, and in his individual capacity. The third defendant, Mabel Christine Baker, is not a party to the motion now before us.

The action for specific performance was tried to the Court without a jury on April 17, 1985. On November 8, 1985, we issued a written opinion embodying our Findings of Fact and Conclusions of Law, which are incorporated herein by reference. Judgment was rendered in favor of NASCO on December 2, 1985, in accordance with our written opinion. Chambers and CTR were, among other things, ordered to perform, fully and in good faith, the obligations undertaken by them pursuant to the Agreement. We refused a stay and retained jurisdiction for the purpose of implementing the execution of our judgment and the Purchase Agreement. Thus the judgment is now executory.

On the instant motion, NASCO seeks our assistance and/or supervision in resolving certain disputed issues which have arisen between the parties, and which now threaten to impede the closing of the sale of KPLC-TV. Specifically, NASCO prays: (1) That the material physical assets of CTR currently used directly in the business and operation of the station be conveyed to NASCO at the

original purchase price, pursuant to the terms of the Agreement; (2) that Chambers and CTR bear the expense of certain repair and maintenance work needed to bring two station transmission towers into a state of normal repair; (3) that the intangible personal property to be conveyed pursuant to the Agreement are to include the station's telephone numbers, post office box, and unemployment tax rate;[1] (4) that prepaid premiums for current insurance coverage on station assets are not to be prorated between the parties at closing under the terms of the Agreement; (5) that the $18 million dollar purchase price be paid into the Registry of the Court, pending the removal of any cloud on the title, including that presented by the appeals that are now pending from the final judgment rendered herein; and (6) that the contractual deadlines for the fulfillment of the conditions precedent to the sellers' obligations under the Agreement be extended in light of the delays encountered in obtaining final Federal Communications Commission (FCC) approval of the license transfer application.

An evidentiary hearing on these issues commenced on July 16, 1986. After recess, the hearing resumed on July 21, 1986, and was completed the following day. At the commencement of the hearing, we allowed the filing of an intervention on behalf of the Calcasieu Marine National Bank of Lake Charles, Louisiana (the Bank), asserting security interests in certain properties at issue on this motion, as well as in certain other properties and assets covered by the Agreement. The Bank asks to be paid with preference and priority out of the proceeds of the sale of KPLC-TV.

Unless resolved, the issues presented on this motion will clearly impede the consummation of the Agreement and the implementation of our final judgment. The appeals now pending on the merits notwithstanding, we have jurisdiction to adjudicate these issues, pursuant to our powers as a court of equity, and pursuant to the express retention of jurisdiction embodied in Paragraph X of the

judgment rendered herein. The pendency of the defendants appeals does not divest us of that jurisdiction. *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743 F.2d 298, 299, n. 2 (5th Cir. 1984).

FINDINGS OF FACT

1.

The Findings of Fact set out in our written opinion of November 8, 1985, are adopted by reference herein.

2.

Although the parties appeared at one time to have been in agreement that the required FCC approval of the license transfer application became final on July 21, 1986, that, and perhaps other deadlines apparently are now in dispute.

3.

Time is of the essence in this transaction.

A. *Tangible Assets:*

4. –

The object of the sale contemplated by the Agreement is television station KPLC-TV — an ongoing business enterprise. That sale was to be accomplished through an asset purchase of its broadcast facilities, tangible and intangible assets, and licenses. *See* Testimony of Patrick Redden, 4 Tr. 107, 110-11.[2]

5.

The tangible assets to be conveyed pursuant to the Agreement are the material physical assets of CTR that are used directly in the business and operation of the station, that is KPLC-TV.

The Agreement defines the purchased assets as including the tangible personal property described in Agreement Exhibit B used for the direct operation of the station. Purchase Agreement, ¶ 1(a)(ii), at p. 2. The Agreement further obliges the sellers to represent, warrant, and covenant that Exhibit B is a true and accurate description of the material physical assets owned by CTR and used directly in the business and operation of the station. *Id.*, ¶ 9(b), at p. 11. The Agreement further provides that NASCO's obligations under the Agreement shall be subject to the fulfillment and performance of certain conditions as of the date of closing — namely, that the seller's representation, warranty, and covenant with respect to the accuracy of Exhibit B as a list of the material physical assets of the station is substantially true, and without material change adverse to NASCO, as of the date of closing. *Id.*, ¶ 11(a)(i), at p. 15.

6.

Exhibit B is an inventory of station assets prepared by various station department heads in January, 1983 for purposes unrelated to the sale of KPLC-TV to NASCO. Testimony of Rita Chambers, 2 Tr. 18, 49-51. No reinventory or other activity was undertaken by station personnel prior to August 9, 1983 to assure the current accuracy of that exhibit as a list of the material physical assets used directly in the business and operation of the station. *Id.* at 51. Indeed, several material physical assets then used directly in station operations were omitted from that exhibit. *Id.* at 51-54

7.

Exhibit B, therefore, did not represent a true and accurate listing of the material physical assets used directly in the business and operation of television station KPLC-TV as of August 9, 1983. *Id.* Nor did it furnish, therefore, a true base for identifying the assets to be transferred at the date of closing.

8.

The sellers' warranty and covenant that Exhibit B is a true and accurate list of the material physical assets of CTR used in station operations is a continuing warranty and shall survive delivery of the assets and payment of the purchase price. Purchase Agreement, ¶ 15, at p. 23. Thus, it was contemplated by the parties that NASCO would test the fulfillment and performance of that covenant by conducting its own inventory of station assets prior to closing. *Id.*, ¶ 19(a), at p. 29.

Because of the defendants' breach of the Agreement, NASCO's initial inventory was not conducted until October 1983.

9.

Between March 1983 and January 1986, certain items of tangible personal property were acquired by CTR. These assets, which included television broadcast and production equipment, vehicles, and office and accounting equipment, were installed at the broadcast facilities of KPLC-TV and have thereafter been used directly in the daily business and operation of the station. These assets were not listed on Agreement Exhibit B.

10.

On August 5, 1983, Calcasieu *TV* and Radio, Inc. (CAL-TV), a wholly owned subsidiary of CTR, was incorporated. The officers of that corporation are G. Russell Chambers, the sole shareholder and Director of CTR; Rita S. Chambers, the President of CTR; and Albert Smith, the Executive Vice President for Engineering of CTR. The purported purpose of this subsidiary corporation was the production of commercial videotapes.

11.

The officers of CTR confected a series of seventeen "Equipment Lease Agreements" which were placed into

evidence in this matter. *See* Exhibits P-3 through P-19. These documents purport to have been executed between August 5, 1983, and January 21, 1986 — with two leases dated in 1983, seven in 1984, seven in 1985, and one in 1986. These leases purport to cover some $644,072.40 worth of tangible assets acquired by CTR between March 1983 and January 1986. Each lease is executed by Albert Smith on behalf of CAL-TV, as lessor, and by Rita Chambers on behalf of CTR, as lessee. Under the terms of these various lease agreements, CTR is required to pay some $1,214,689.40 in rental payments to CAL-TV — an amount nearly double the aggregate invoice prices of the covered assets.

12.

These "lease agreements" are nothing more than instruments of deception:

(a) In response to NASCO's subpoena *duces tecum* for the seventeen lease agreements, together with their associated invoices, checks, and vehicle registration certificates, CTR produced Xerox copies of the leases. NASCO subsequently insisted that the original leases be produced. *See* Exhibit D-9 (*in globo*). Examination of the original lease documents shows that the dates on the majority of the documents have been manually altered.

(b) The two earliest leases are dated August 5, 1983 and December 1, 1983, respectively. Exhibit P-3 and P-4. Mrs. Chambers testified under oath that she had signed those leases on those dates. Testimony of Rita Chambers, 1 Tr. 99, 115-37. She denied under oath that the leases had been backdated. *Id.*, 2 Tr. 79. The evidence shows, however, that on the date she purportedly signed herself "Rita S. *Chambers*" on those leases, she was, in fact, not yet married to Chambers. *Id.* at 80-81. She did not marry Chambers until December 27, 1983. *Id.* at 80.

(c) Albert Smith, an officer of both CTR and CAL-TV, who signed the leases on behalf of CAL-TV, as lessor, admitted under cross-examination that *none* of the equipment lease agreements had been signed until some time in 1986. Testimony of Albert Smith, 3 Tr. 182, 184-85.

(d) All of the equipment covered by these purported leases was paid for with CTR checks — *not* CAL-TV checks. Exhibits P-3 through P-19; Testimony of Rita Chambers, 2 Tr. 18, 62-63. All but one of the seventeen leases shows invoices identifying either CTR or KPLC-TV as the purchaser. The defendants' contention to the contrary notwithstanding, no credible evidence was adduced suggesting that the ownership of the leased assets was vested in any entity other than CTR. Indeed, several of the assets covered by the lease agreements — namely, those on Lease 1B (Exhibit P-4), Lease 2 (Exhibit P-5), and Lease 6 (Exhibit P-9) — are clearly owned by CTR, the purported lessee, and *not* by CAL-TV, the purported lessor.

(e) The equipment covered by Lease 2 (Exhibit P-5) is also listed on Agreement Exhibit B — the defendants' own inventory of station assets to be conveyed, prepared in January 1983. Testimony of Rita Chambers, 2 Tr. 18, 78. Despite direct questioning, no rational explanation was given by the defendants' witnesses as to how or why equipment clearly designated by the defendants themselves as purchased assets in August of 1983 managed to show up on a backdated equipment lease agreement identifying CTR (the owner of that equipment) as the lessee.

13.

We find that the purpose of these purported lease

agreements was to create the *appearance* of ownership of the covered assets by CAL-TV as opposed to CTR, *see* Testimony of Albert Smith, 4 Tr. 1, 95; to create the *appearance* that the assets covered by these leases had been dedicated to nonstation uses; and to deplete station assets and profits by draining off nearly double the aggregate purchase price of the covered equipment, as well as the equipment itself, into a subsidiary corporation that would remain in the defendant's hands after closing.

14.

All of the equipment covered by the seventeen Equipment Lease Agreements is, and has been from the date of its acquisition, owned by CTR, installed and maintained at the KPLC-TV broadcast facilities, and used predominantly, if not exclusively, in the direct business and operation of the station. Testimony of Rita Chambers, 2 Tr. 18, 65-68; Testimony of Albert Smith, 3 Tr. 182, 188-89; *Id.*, 4 Tr. 1, 6-7, 16-45.

15.

CAL-TV has had no production activities to which the disputed assets could have been dedicated.

Mrs. Chambers initially testified under oath that the source of CAL-TV's income was its production activities, that CAL-TV has earned production income during its existence, and that it has had no other source of income other than production. Testimony of Rita Chambers, 1 Tr. 99, 106-07. On closer cross-examination, she admitted that the rental payments under the seventeen purported lease agreements was a *second* source of income. *Id.* at 108. On being confronted with CAL-TV's monthly financial statements for the period ending June 30, 1986, however, she admitted that no production income at all had been earned by CAL-TV in 1986. *Id.* at 111, 114. Subsequently, after CAL-TV's monthly financial statements for the years 1983 through 1986 had been subpoenaed and produced, she

finally conceded that CAL-TV had earned no production income whatsoever during the entire course of its existence. *Id.*, 2 Tr. 18, 72, 74.

In Mrs. Chambers' words, CAL-TV is, and always has been, a "part-time operatiion." *Id.*, 1 Tr. 99, 103-04. It has had no full-time employees, no regular part-time employees, and no expenditures for employee salaries (other than the salaries paid to Chambers, Mrs. Chambers, and Albert Smith as officers) since its inception. *Id.*, 2 Tr. 18, 68-75; *Id.*, 1 Tr. 99, 103-06; Exhibits P-25 through P-28.

16.

Defendants would have us believe that the only equipment which is susceptible to being "consumed or depleted"' is automobiles. This theory is reputed by the Purchase Agreement, § 1(a)(ii). The equipment and assets at issue on this motion — including "new equipment and assets acquired after August 9, 1983, and equipment and assets covered by the seventeen purported lease agreements were never used by CAL-TV and constitute direct replacements of "consumed or depleted" equipment and assets listed by the defendants on Agreement Exhibit B, with the exception of the equipment and assets covered by Lease 7A (Exhibit P-10), Lease 9 (Exhibit P-12), Lease 11 (Exhibit P-14), and Lease 13 (Exhibit P-16). Testimony of Al Evans, 3 Tr. 119, 144-53; Exhibit P-37.

The evidence shows, for example, that there were eighteen cameras listed on Exhibit B, and there are eighteen cameras currently in use at KPLC-TV; there were nineteen three quarter inch fixed tape recorders listed on Exhibit B, and there are nineteen such tape recorders now in use; there were ten portable three quarter inch tape recorders listed on Exhibit B, and there are ten such recorders in use today; there were seven editing controllers listed on Exhibit B, and there are five such controllers currently in use; there were thirty-three typewriters listed on Exhibit B, and there are thirty-five in use today; and there

were twenty-one vehicles listed on Exhibit B, and there are twenty-one vehicles now used in the business and operation of the station. Testimony of Al Evans, 3 Tr. 119, 131-43; Exhibit P-36.

The additional equipment and assets identified above can only be characterized as indirect replacements of assets listed on Exhibit B. Under direct examination by defense counsel, Albert Smith, the CTR Executive Vice President for Engineering, was taken laboriously through each and every asset on each and every lease agreement. As to each such item, he testified that it was installed at the KPLC-TV studio site, that it had been removed from service on July 18, 1986, that it had been used directly in the business and operation of the station prior to that date, and that its function at the station was now being served by an asset listed on Exhibit B. Testimony of Albert Smith, 4 Tr. 1, 16-45. A clearer characterization of these assets (which include the equipment used in the daily weathercasts and the computer which handles station payroll funtions) as replacements could hardly be imagined. These items of equipment which were one of the principal matters in contention at the hearing of plaintiff's motion were removed on advice of defendants' counsel without notice to opposing counsel or the Court and during the pendency of the hearing. To maintain the status quo we ordered them to be reinstalled.

17.

All of the equipment and assets at issue on this motion are material physical assets of CTR used directly in the business and operation of television station KPLC-TV.

The evidence is uncontroverted that all of these disputed items were being used in the operation of the Station from the time that each was installed. There is no provision in the Agreement which authorizes their removal. They become dedicated to Station use, and to transfer under the Agreement, from the moment they were

installed. The incorporation of these assets into station functions has altered both the Station's on-air "look," and its daily business and technical operations. Removal of the disputed assets from the Station would result in an immediate deterioration of Station functions, readily and immediately perceivable by the viewing public and Station employees.

18.

We find that the equipment and asset inventory conducted by NASCO in April of 1986, as exemplified in Exhibits P-30, P-31, and P-35, is uncontested and represents the complete, true, and accurate listing of the material physicial assets currently used by CTR directly in the business and operation of television station KPLC-TV.

B. *Condition of Towers:*

19.

Among the properties and assets to be sold to NASCO pursuant to the Agreement are two transmission towers — a 1,400 foot transmission tower situated in Jefferson Davis Parish, and a 400 foot auxiliary tower situated at the KPLC-TV studio site in downtown Lake Charles. Purchase Agreement, ¶ 1(a)(i), at p. 2. These towers are clearly included withn the property descriptions set forth in Exhibit A to the Agreement, which exhibit is expressly identified as describing property used directly in the business and operation of the station. *Id.*, ¶ 1(a)(i), at p. 2 *Id.*, ¶ 9(b), at p. 11; *Id.*, Exhibit A.

20.

With respect to the maintenance and repair of such assets, the Agreement provides that the Seller "shall, at its own expense, keep in a normal state of repair and operating efficiency *all tangible personal property and assets currently used in the operation of Station.*" *Id.*, ¶ 9(i), at p. 13 (emphasis added).

21.

We find that the two transmission towers covered by the Agreement are in a state of normal repair and operating efficiency except that the Jefferson Davis tower requires the retensioning of all guy wires in accordance with design specifications, Deposition of Robert Shoolbred, at pp. 11-13, 17-18, 29-32. Testimony of Normal Coaba, 3 Tr. 211, 221-22, 240; and the coating of guy wires and winchlift cables to prevent rusting. Deposition of Robert Shoolbred, at pp. 16, 18 32-33. The repair of guy wire ground connections, in order to eliminate the junctions of dissimilar metals, has already been completed by the defendants. Testimony of Norman Coaba, 3 Tr. 211, 230-31.

C. *Intangible Assets:*

22.

The Agreement requires the conveyance to NASCO of "(a)11 intangible personal proterty used by Seller in the direct operation of the Station." Purchase Agreement, ¶ 1(a)(iii), at p. 2 (emphasis added).

23.

The Station's telephone numbers, post office box, and unemployment tax rate, as well as the music and music rights owned by or licensed to the Station, are intangible personal property within the meaning of Paragraph 1 of the Agreement.

24.

The defendants concede in brief that the music and music rights owned by or licensed to KPLC-TV are to be conveyed to NASCO pursuant to the Agreement.

25.

We find that the telephone numbers currently assigned to KPLC-TV are not utilized by or allocated to

CTR. Testimony of Rita Chambers, 2 Tr. 35-36. Although CTR does share P. O. Box 1448 with KPLC-TV, that box is predominantly associated with KPLC-TV, and not CTR. *Id.* at 31-34; Exhibit P-21. The unemployment tax rate at issue derives exclusively from the employment of KPLC-TV personnel. Testimony of Rita Chambers, 2 Tr. 18, 31-32. Moreover, the evidence establishes that the defendants intend to dissolve CTR as a corporation prior to the closing of the sale. *Id.* at 31. Thus, CTR can have no use whatsoever for these intangible properties after the transaction is consummated.

Accordingly, the Court finds that the telephone numbers, post office box, and unemployment tax rate of KPLC-TV are an integral part of the intangible assets of the station.

D. *Proration of Insurance Premiums:*

26.

The Agreement does not, in express terms, provide for the proration at closing of insurance premiums paid by the defendants for coverage of the purchased assets.

27.

Although the Agreement does provide for the proration of "prepaid items" at closing, Purchase Agreement, ¶ 8(b), at p. 10, no evidence was adduced to indicate that insurance premiums are, by custom or by generally accepted accounting principles, included within the definition of "prepaid items," or that any insurance premiums were in fact, prepaid by the defendants for coverage of purchased assets.

E. *The Cloud on Title:*

28.

The Agreement requires Chambers and CTR to

deliver "full, absolute, marketable and insurable title" to NASCO on the day of closing. Purchase Agreement, ¶ 9(e), at pp. 11-12, ¶ 9(g), at p. 12, ¶ 12, at pp. 16-20.

29.

The appeals lodged by Mable Christine Baker, Chambers, and CTR that are now pending in the United States Court of Appeals for the Fifth Circuit, together with the adverse claims of Mrs. Baker to certain purchased assets, constitute a substantial cloud on the title that is required to be conveyed to NASCO pursuant to the Agreement. So long as those appeals are pending, Chambers and CTR cannot deliver to NASCO the clear title they are required by the Agreement and the judgment of this Court to deliver.

30.

The removal of the cloud on the title to the purchased assets lies within the sole power and will of G. Russell Chambers.

31.

Calcasieu Marine National Bank of Lake Charles, Louisiana has intervened in these proceedings, alleging that defendants CTR and G. Russell Chambers are indebted to the Bank in an amount in excess of $3 million dollars secured by collateral mortgage and other security devices introduced by intervenor into evidence at the hearing on this matter. These instruments might constitute a cloud on the title of certain of the assets to be transferred under the Purchase Agreement. We have retained jurisdiction for the purpose of implementing the execution of our judgment of December 2, 1985 and the Purchase Agreement, and the resolution and disposition of issues posed by intervenors' claimed mortgages and security devices can be resolved at the time of closing of the sale.

F. *Extension of Contractual Deadlines:*

32.

FCC approval of the pending license transfer application became final on July 21, 1986. But for the oppositions filed by CTR Executive Vice President Albert Smith and CTR Vice President Jerry Goos — and particularly the Petition for Reconsideration filed by CTR Vice President Goos — FCC approval of the license transfer application would have become final on May 14, 1986. Testimony of Robert Halprin, 3 Tr. 173, 180-81.

33.

The oppositions filed by CTR Executive Vice President Smith, and the several pleadings in opposition filed by CTR Vice President Goos, were filed with the FCC in direct violation of the express terms of this Court's judgment of December 2, 1985. Judgment, ¶¶ VII, XII.

G. *Credibility:*

34.

The testimony of Rita Chambers is unworthy of belief. It is replete with internal inconsistency, evasion, and misstatement; it evinces a recollection so tainted by bias as to be completely unreliable. At best, it displays a calculated indifference to truth that borders on outright falsehood.

35.

The testimony of Albert Smith is unworthy of belief. Mr. Smith's admitted bias, his desire to help Chambers prevail in this litigation to the fullest extent of his capabilities, his participation in the fabrication of the seventeen bogus lease agreements, and his patently unbelievable insistance that the assets at issue on this motion are dedicated to production activities of CAL-TV

which incontrovertibly have never existed, lead us to reject his testimony.

36.

The testimony of Patrick Redden is unworthy of belief. Mr. Redden testified in detail and under oath that he examined, or had access to, the purporated equipment lease agreements in the course of preparing the year-end audits for the years 1983, 1984, and 1985. Testimony of Patrick Redden, 4 Tr. 107, 132-34, when in fact those leases were not confected, and did not exist, until some time in 1986. Mr. Redden's testimony in this regard so far diverges from the reality of the matter that the Court must reject his testimony.

CONCLUSIONS OF LAW

We reject at the outset the defendants' attempts to characterize this proceeding as a suit in equity for injunctive relief, imposing upon NASCO the burden of proving that its "remedy at law for the breach of contract it alleges" is inadequate. This is not a suit in equity for injunctive relief. It is a motion for judicial assistance in implementing the judgment of the Court. NASCO has already proved its entitlement to equitable relief for the defendants' breach of contract, and has already been awarded that relief. Whether NASCO has an "adequate remedy at law" is not at issue on this motion.

We also reject the defendants' attempts to characterize this motion as a request for a partial stay of the judgment of December 2, 1985, imposing upon NASCO the burden of proving that it will suffer irreparable harm if the requested relief is not granted. This suggestion is as disingenuous as it is ludicrous. This is not a motion for a stay.

The instant motion is simply a request for judicial assistance in resolving certain disputed matters so that the transaction contemplated in the Purchase Agreement, and

ordered consummated by this Court in its final judgment, can at long last be closed.

A. *Tangible Assets:*

At issue on this motion are tangible assets in use of KPLC-TV on August 9, 1983 but omitted by Chambers and CTR from Agreement Exhibit B, as well as certain tangible assets now in use at KPLC-TV and acquired by CTR during the three year delay caused by the defendants' breach of the Agreement.

The question is whether these assets, not listed on Exhibit B, are required to be conveyed to NASCO for the original purchase price.

We adopt defendants' suggested conclusion of law:

> "13. Where, as here, the Court orders specific performance of a contract, it must enforce that contract according to the letter of the contract. The Court has no power to reform the contract in the process of enforcing it. *Bielawski v. Landry*, 397 So.2d 861, 864 (La.Ct.App.), *cert. denied*, 400 So.2d 904 (1981). Moreover, where the terms of the contract are clear and explicit, and lead to no absurd result, the terms of the contract may not be varied or contradicted by parol evidence. *Sims-Smith, Ltd. v. Stokes*, 466 So.2d 480, 483 (La.Ct.App. 1985). The Court cannot create an ambiguity in the contract where none exists or rewrite the agreement made by the parties. *In re Jurisich*, 224 La. 326, 331, 69 So.2d 361, 363 (1953). Tennessee law is in accord. *Jones v. Brooks*, 696 S.W.2d 885 (Tenn. 1985)."

Utilizing this standard, as well as statements, arguments, concessions of defendants, we find that the Agreement contemplates (and expressly states the intent of the parties) the transfer for an agreed consideration of

$18 million dollars an operating facility, namely KPLC-TV and more specifically the sale and transfer of all assets and rights directly used and useful in the business and direct operation of the Station at the date of closing.

The effect of the Agreement cannot be determined by citing and considering this or that provision of the Agreement in isolation. The true meaning can only be ascertained by contemplating such provisions in context, that is, in relation to all the other provisions in the Agreement. For instance, in support of their contention that the tangible items to be transferred be limited strictly to those items listed in Schedule B, defendants have cited repeatedly the following paragraph from the Agreement:

> "1(a)(ii). The tangible personal property described in *Exhibit B* attached hereto used for the direct operation of Station, except such part thereof as may be consumed or depleted in the normal and ordinary course of business prior to Closing."

Purchase Agreement 1(a)(ii), at p. 2 (Exhibit P-1).

If we were to agree with defendants' contention, then we would have to find that defendants intended to sell and plaintiff intended to buy only part of the Station (the items described in Schedule B) and that even the Schedule B items would be eliminated from the sale as they were taken off line. Given two or more years of additional litigation and perhaps all the equipment in Schedule B would have to be taken off line. This interpretation thus leads to an absurd result.

Defendants themselves have recognized the absurdity of this contention: (1) Jonathan Golden, Atlanta counsel who represented defendants in the drafting of the Purchase Agreement, has agreed that certain properties owned by CTR at the time of the drafting of the Agreement were omitted and should have been included in Schedule B; (2) Defendants, in their reply brief to the Fifth Circuit on the

appeal of this matter, contended:

> "NASCO contracted to purchase a *television station* and KPLC-TV's current management wishes to continue to operate that same station. If partial specific performance were awarded, neither party would get its wish; the station would simply cease to exist.
>
> * * *
>
> "The authorities cited by NASCO and the court below do not support an award of specific performance when the contract to be performed is for the conveyance of a *business entity* rather than merely a body of movable or immovable property and when that partial specific performance would have the effect of destroying the entity sought to be conveyed." Reply Brief on Behalf of Calcasieu Television and Radio, Inc. and G. Russell Chambers, at pp. 9-10 (emphasis in original).

(3) Defendants have conceded that any "new" assets (i.e., assets not listed on Exhibit B) which, in fact, replace assets listed on Exhibit B are covered by the Agreement and are to be conveyed to NASCO for the original price. Defendants' Opposition to NASCO's Motion for Judicial Assistance and/or Supervision and Pretrial Memorandum, p. 3.

We conclude that the disputed assets at issue on this motion are to be conveyed to NASCO for the original purchase price, pursuant to the terms of the Agreement.

We have found as fact, that *all* of the assets and equipment at issue on this motion constitute direct or indirect replacements of assets listed on Agreement Exhibit B. This finding is based on the testimony adduced, and the credibility determinations made by the Court in response to that testimony. The disputed assets and equipment are

not "extra pieces," as the defendants would contend. They are integral and material assets used directly in the daily business and operation of the Station. Without these assets, Station functions would be immediately impaired. Given the defendants' concession as to the transfer of replacement assets, these findings alone are sufficient to warrant the granting of the relief sought by NASCO on this issue.

Beyond that, however, both the language of the Agreement and the equities of the case demand that result.

As has been noted, the object of the sale contemplated by the Agreement is television station KPLC-TV — an ongoing business enterprise. That is what the defendants contracted to sell, and that is what NASCO contracted to buy. NASCO did *not* negotiate and agree to purchase a disembodied inventory of real estate, office and electronic equipment, vehicles, and licenses. It negotiated and agreed to purchase a television station. The conveyance of that object was to be accomplished by means of an asset purchase, rather than a stock purchase. That is, instead of conveying the stock of CTR in order to transfer the Station, the parties agreed to convey the broadcast assets owned by CTR. But the *object* of the sale is, and always was, the *Station*.

That conclusion is supported by the language of the Agreement, which must be construed against the seller. La. Civ. Code art. 2474.

With respect to the tangible personal property involved in the transfer, it is clear that the Agreement contemplates the conveyance of *all* material physical assets of CTR used directly in the business and operation of the Station, as of the date of closing.

The Agreement does define the covered tangible personal property in terms of the inventory listed on Exhibit B to the Agreement. Purchase Agreement, ¶ 1(a)(ii), at p. 2.

But it goes on to require the seller to expressly represent, warrant, and convenant that Exhibit B "represents a *true and accurate* description of the *material physical assets* . . . used . . . directly in the business and operation" of the station. *Id.*, ¶ 9(b), at p. 11 (emphasis added). That language leaves no room for doubt that the tangible personal property intended by the parties to be conveyed is *all* of the *material* physical assets used in the business and operation of the station. *Material* physical assets — not *essential* assets or *necessary* assets. The phrase "material physical assets . . . used . . . directly in the business and operation" of the Station defines the *required* scope of Exhibit B. And the various references to that Exhibit throughout the Agreement incorporate that language by reference. Moreover, Exhibit B can be "true and accurate" as required by the Agreement only if it is complete and inclusive of all such assets. Thus, the Agreement calls for the sale of all material physical assets of CTR used directly in the business and operation of KPLC-TV.

Nor can it be seriously questioned that the Agreement requires the conveyance of those material physical assets as they exist on the date of closing. Paragraph 11(a) provides, in pertinent part:

> The obligations of Buyer . . . under this Agreement shall be subject to fulfillment *prior to or at the Closing* of each of the following conditions:
>
> (i) That *all* of *Seller's representations and warranties* contained in this Agreement *are substantially true* and *without material changes adverse to Buyer as of Closing Date;* and
>
> (ii) That *Seller* has *substantially complied with and performed, without deviation materially adverse to Buyer, all* agreements and conditions required by the Agreement to be performed or complied with *prior to or at*

the Closing Date.

Id., ¶ 11(a), at pp. 15-16 (emphasis added).

These covenants and conditions with respect to the truth and accuracy of Exhibit B as a list of the material physical assets used directly in the business and operation of the station, without material adverse change as of the date of closing, are contractual obligations undertaken by the defendants pursuant to the Agreement. They require the defendants to convey the station, together with all material physical assets used directly in its business and operation, as of the date of closing. The judgment of December 2, 1985 orders the defendants to perform those obligations.

Exhibit B was *not* a true and accurate description of the material physical assets used directly in the business and operation of KPLC-TV on August 9, 1983. The evidence establishes without controversy that the inventory (Schedule B) was taken in the ordinary course of business in January 1986 and for reasons entirely unrelated to the Agreement; it was not taken for the purpose of describing the properties to be transferred under the provisions of the Agreement. It was not accurate or all inclusive when made. It certainly is not now.

We have found, as fact, that all of the assets at issue on this motion are direct or indirect replacements of assets listed on Exhibit B (which the defendants concede must be conveyed). We have found that all of the disputed assets are *material* physical assets that are used directly in the business and operation of the Station. We have found that once they have been installed and dedicated to use by KPLC-TV, like the original items they replaced, that dedication cannot be revoked and the equipment cannot be removed unless they are "consumed or depleted" prior to closing. We have found that the exclusion of these assets from the sale would result in a material reduction in the quality of the on-air "look" of Station programming, in the

reliability of the technical functions of the Station — changes which would be immediately perceivable, and immediately perceived, both by the viewing public and Station employees.

The disputed assets must therefore be conveyed.

The equities allow no other resolution.

The immediate dispute now before us is a dispute of the defendants' own creation. The delay in the consummation of this transaction is the direct result of the defendants' initial breach — a breach that was deliberate, calculated, and in absolute bad faith. The inordinate length of that delay is the direct result of a defense attorney strategy which has incorporated every conceivable tactic of delay, deception, evasion, and outright contempt that can be imagined, and which has continued unabated to this day.

The changes in the material physical assets of the station which the defendants now seek to hold back from the closing table were deliberately and systematically made by them in the face of this Court's repeated, unequivocal, and emphatic admonitions that the *status quo ante litem* would be preserved. NASCO managed to forestall one major alteration unilaterally undertaken by the defendants — the construction of a new 2,000 foot antenna tower — only by attempting to initiate contempt proceedings. As a direct result of that incident, this Court enjoined the defendants

> [f]rom any act or acts in furtherance of the construction of new facilities and/or *the relocation, substitution, or other alteration of existing facilities*, except as may be required for the preservation and maintenance of purchased assets or otherwise for the fulfillment of the obligations assumed by the defendants pursuant to the August 9, 1983 Purchase Agreement.

Judgment, ¶ IX(c). But NASCO had no way to know of, or to stop, the material changes that are at issue on this motion.

Throughout the period during which the disputed assets were acquired the defendants were well aware that the sale contemplated by the Agreement would ultimately be consummated. They *stipulated* that the Agreement was valid, binding, and enforceable. They *stipulated* that they had breached the Agreement for reasons of their own. They *stipulated* that NASCO had not. And yet they replace substantial assets with new assets, which were installed and used exclusively at KPLC-TV, not CAL-TV, and replaced "consumed and depleted" equipment. Their removal would immediately degrade the on-air "look" and the daily business and technical functions of the station. Having acquired those assets, the defendants then confected a series of seventeen fraudulent leases which have no discernible legitimate purpose. Indeed, the Court can only conclude that the sole purpose of those leases was to create the *appearance* that the disputed assets are owned by CAL-TV, rather than CTR; to bolster the defendants' contentions that the disputed assets are used exclusively for the nonexistent "production activities" of CAL-TV, instead of station operations; and to siphon off station profits (for which the defendants must ultimately account to NASCO) by allowing CTR to pay out in rentals to CAL-TV some $1.2 million for $600,000 worth of assets which would ultimately be left (along with the rental payments) in the hands of Chambers and CTR at closing.

The defendants argue that they contracted to convey only a 1983 vintage television station to NASCO, and that they are now obliged to deliver only a 1983 vintage station. The problem with that argument is obvious. The defendants' initial obligation was to convey a 1983 vintage station to NASCO *in 1983*. They cannot now fulfill that obligation. It is 1986. And the station is no longer a 1983 vintage station.

To exclude the disputed assets from the sale of KPLC-TV would impose upon the station an immediate deterioration in the quality of its broadcasts, its technical operations, and its daily business functions that would be immediately perceivable both to the viewing public and to the station employees. That deterioration could not be adequately compensated for with mere adjustments in the purchase price or money damages for delay.

We, in our discretion as a court of equity, must fashion relief so as to do substantial justice. In this case, the granting of the requested relief may arguably impose some measure of detriment upon the defendants. but denial of that relief will surely injure NASCO. And if the choice is merely one of allocating an inevitable detriment as between a defaulting, bad faith seller and an innocent purchaser, the choice is an easy one, indeed. We cannot, in equity, allow the plaintiff — already victimized by the defendants' bad faith breach and subsequent bad faith litigation tactics — to be further victimized by the defendants' deliberate scheme to utilize station profits and assets to fund and equip what is in essence a competing production company. We cannot, in equity, allow the delays generated by the defendants' bad faith breach to work to the prejudice of NASCO or to the detriment of station operations. We cannot, in equity, allow the obvious intent of the parties, as embodied in the Agreement, to be defeated by a strained and hypertechnical construction of contractual language.

The disputed assets will therefore be conveyed to NASCO for the original purchase price, and the admittedly incomplete and outdated Exhibit B shall be replaced by Exhibits P-30, P-31, and P-32 (the April 1986 inventory conducted by NASCO) as the true and accurate description.

The testimony adduced at the hearing of this matter suggest that several minor items included on NASCO's 1986 inventory are, in fact, the private property of station

employees, rather than assets of CTR. *See* Testimony of Albert Smith, 4 Tr. 1. 57-59. Those items include: a wall painting, listed on page seventy-four of Exhibit P-30; a three foot potted plant, listed on page seventy-four of Exhibit P-30; a Sanyo four foot freezer, listed on page seventy-five of Exhibit P-30; a Sanyo CX-5500 calculator (Sales #1), a Texas Instruments TI-5015 calculator (Sales #2), a Texas Instruments TI-5100 calculator (Sales #3), a Texas Instruments TI-5100 calculator (Sales #4), a Texas Instruments TI-5040 calculator (Sales #5), a Sears PD-12 calculator (Sales Manager's Office), a Canon P21-D calculator (Sales #7), and a Royal 114PD calculator (Sales #8), listed on pages eighty-six and eighty-seven of Exhibit P-30. Although no credible evidence was adduced sufficient to establish the ownership of these assets by *bona fide* third parties, NASCO has declared its acquiescence in the nonconveyance of these specific items. They are therefore excluded from the assets to be conveyed.

There was also testimony suggestive that certain items included on NASCO's 1986 inventory are, in fact, owned and provided by the network (NBC) and the telephone company (AT&T). *Id.*, at 55-56. These items include: a 13 section video patch panel and three video hairpins (asserted to be owned by AT&T), listed on page eight of Exhibit P-30; and a 15 section video patch panel, 13 video hairpins, a dual audio patch panel, an audio jack pad, and a custom plug panel (asserted to be owned by NBC), listed on page eleven of Exhibit P-30. *Id.* We note expressly that the evidence adduced at trial is insufficient to establish ownership of these assets by *bona fide* third parties. In an abundance of caution, however, and in order to avoid, if possible, the difficulties which might arise in this area, we will specifically order the conveyance to NASCO of whatever right, title, interest, and/or right of use may be held by CTR, and the assignment to NASCO by CTR of CTR's interest in any ongoing contracts with those entities pertaining to that equipment.

B. *Tower Repairs:*

We have found that the two transmission towers at issue on this motion have been maintained by the defendants in a normal state of repair except for the retensioning of guy wires on the Jeff Davis tower as found in our Findings of Fact, paragraph 21.

These towers are tangible assets used in the operation of the station, which the defendants are expressly required to maintain at their expense pursuant to Paragraph 9(i) of the Agreement. This obligation, like the remaining obligations of the Agreement, must be performed. It further appears from the evidence that some of the needed repair work has been done, or is in the process of being done, by the defendants.

Because of the uncertainty of the precise cost of the required maintenance work, we will order that bids be obtained by NASCO from no less than three qualified bidders. If required by the firms submitting bids, the defendants will allow those firms to inspect the towers in question in conjunction with the preparation of the bids. The lowest bid shall be accepted. The cost of the necessary repairs shall be credited against the $18 million purchase price, in accordance with the provisions set forth below.

C. *Intangible Assets:*

The Agreement requires the conveyance of *all* intangible personal property of CTR used in the direct operation of the station. Purchase Agreement, ¶ 1(a)(iii), at p. 2.

The defendants would exclude from these intangible assets the station's telephone numbers, post office box, and unemployment tax rate, arguing that these items are not expressly included in, and are not of the same characater as, those items delineated in the Agreement's exemplary list of such intangibles. The defendants further argue that these items are assets of CTR as a corporation

rather than assets of the station as an ongoing business enterprise. The defendants concede that the music and music rights sought in NASCO's motion are to be conveyed.

The Agreement calls for the conveyance of *all* intangible property used in station operations. It excludes only those assets not used in the direct operation of the station. *Id.*, ¶ 2, at p. 4. The Agreement does not, as the defendants suggest, restrict the purchased intangible assets to those for which CTR will have no use after transferring the station. It expressly calls for the transfer of *all* intangible assets used in the direct operation of the station.

The telephone numbers, post office box, and unemployment tax rate are clearly intangible assets used in the direct operation of the Station within the meaning of the Agreement. The evidence shows that the telephone numbers allocated to the Station are not the telephone numbers allocated to CTR. the post office box is identified with, and used predominately for, the Station. The unemployment tax rate is referable exclusively to the employment of KPLC-TV employees. Beyond that, the defendants' own testimony establishes their intention to dissolve CTR as a corporation when this transaction is closed. Thus, CTR as a corporation has no use for these intangible properties.

The intangible assets in question here are clearly used directly and predominatly in the business and operation of the Station. They are closely identified with the Station as a business entity. They are covered by the express terms of the Agreement. They must be conveyed.

D. *Proration of Insurance Premiums:*

The defendants argue that prepaid premiums for existing insurance coverage on the purchased assets should be prorated as of the date of closing, with that portion of such premiums allocable to postclosing insurance coverage

to be borne by NASCO. Their argument is based on Paragraph 8 of the Purchase Agreement, which provides that "[a]ll . . . prepaid items . . . relating to the Station's operations are to be prorated as of the closing date." Purchase Agreement, ¶ 8(b), at p. 10.

As has been noted, the evidence adduced at the hearing of this matter does not establish that insurance premiums are "prepaid items" within the meaning of the Agreement or that any insurance premiums have, in fact, been prepaid by the defendants.

The defendants' argument on this issue necessarily implies an obligation on the part of NASCO to assume existing contracts of insurance. But the Agreement imposes no such obligation. Under the Agreement, NASCO is required to assume certain specified obligations, none of which includes existing policies or contracts of insurance. *Id.*, ¶ 1(b), at p. 3, and Exhibit E. Nor does it appear from the evidence adduced that such contracts could be assumed. If the testimony of Mrs. Chambers is to be credited, at least a portion of the broadcast assets purchased by NASCO are insured under policies that also cover non-broadcast assets owned by subsidiary corporations. Testimony of Rita Chambers, 2 Tr. 18, 44-45. An obligation to bear the cost of premiums necessarily implies the right to obtain the benefits of the coverage thus purchased. The evidence does not show that this is feasible, or even possible. Indeed, it strongly suggests the contrary.

Moreover, the Agreement expressly requires the defendants to maintain such insurance up to the date of closing, *Id.*, ¶ 9(h), at p. 13, but never once requires that obligation or those contracts to be assumed, and never once expressly requires proration of insurance premiums. Had the parties intended such a result, the language of the contractual provisions pertaining directly to the existing policies of insurance should have manifested that intent. In the absence of such language, such an obligation cannot be imposed.

We, therefore, conclude that the Agreement does not require the proration of insurance premiums as of the date of closing, or the assumption by NASCO of the existing policies.

E. *Escrow of Purchase Price:*

The recorded security instruments claimed by intervenor may constitute a cloud on the title of properties and assets to be sold.

The pendency of the appeals filed herein by Chambers, CTR, and Mabel Christine Baker, as well as Mr. Baker's adverse claim to the immovable purchased assets, constitute an obvious and substantial cloud on the title to the properties covered by the Agreement. The defendants, therefore, are unable now, and will remain unable during the pendency of those appeals, to fulfill their express contractual obligation to deliver "full, absolute, marketable and insurable title" to NASCO at closing. *See e.g.*, Purchase Agreement, ¶ 9(e), at pp. 11-12.

At closing, the purchased assets shall be delivered to NASCO in full compliance with the terms of the Agreement. Because the defendants are unable to deliver clear title to those assets until such time as the pending appeals are disposed of, NASCO shall pay the $18 million purchase price into the Registry of the Court, to be placed in the highest interest bearing account available, and there to be held until such time as the temporary cloud on title represented by the pending appeals is removed. Upon the final resolution of those appeals, the purchase price, with accrued interest, and less and except those credits ordered by the Court, shall be disbursed to the appropriate party, after due notice, motion and hearing.

F. *Extension of Deadlines:*

Prior to the filing of plaintiff's Motion for Judicial Assistance, there was apparently substantial agreement on

the meaning of the deadline-termination provisions in the Agreement. Under the present set of circumstances and for reasons already outlined in our Opinion of August 1, 1986, we feel that this is a superfluous issue which need not be addressed by the Court.

Borrowing from Findings (3) through (6) of that Opinion, the Purchase Agreement of August 9, 1983 provided that time was of the essence. Practically all of the delay to this date was generated by defendants' failure and refusal to perform a contract which they long ago admitted was legal, binding and enforceable and which they alone breached. Judgment in favor of the plaintiff was entered finally on December 2, 1985 and a joint application for the transfer of the license was filed thereafter. Plaintiff proceeded to take and complete their final inventory of the properties of KPLC-TV in April of 1986 but further progress toward completion of the sale was prevented because two of the principal officers of CTR had filed with the FCC opposition to the transfer of the license. Such action by employees of CTR were specifically enjoined by the judgment of this Court. Plaintiff brought contempt proceeding against each of these officer-employees and at a special status conference in May 1986 were persuaded by this Court to abandon this pursuit of these charges if the two officer-employees would withdraw their opposition. We were motivated in this action, not by any doubt of the guilt of the officer-employees, but a desire, shared by the plaintiff, to accelerate the completion of the sale. Thereafter the attention of the parties turned again to preparations for the final sale of the station properties. Meetings were held, including meetings at the offices of Jonathan Golden, defendants' attorney in Atlanta who had been concerned principally with the drafting of the Purchase Agreement. At these meeting disputes developed regarding the property to be conveyed and plaintiff discovered for the first time the existence of the bogus leases which have been discussed in detail above. Significantly, it was plaintiff who brought and filed the Motion for Judicial Assistance which

is the subject of this Opinion. Certainly defendants had no interest in resolving these disputes or completing the sale. They and some of their attorneys in this proceeding have not hesitated to use any devious and underhanded tactic available to defeat the performance of this contract. The latest of these occurred when CTR, on the advise of Mr. Edwin McCabe, its attorney at this hearing, and while this hearing was in progress, removed a substantial number of disputed items of equipment from use by KPLC-TV, knowing that plaintiff's claim is predicated on the theory that those items were being used and would continue to be used until date of closing as replacements for other operating equipment. This move was calculated and deliberate and was done slyly and surreptitiously without notice to opposing counsel or to this Court.[3]

We have before us the question of what properties are to be conveyed under the Purchase Agreement and defendants' obligation to transfer cannot be satisfied until that issue is determined. Put another way, plaintiff cannot be required to pay the $18 million purchase price as long as there is a substantial and undertermined issue of what property that sale should cover.

Under the circumstances of this proceeding, the timing and termination provisions are irrelevant. Neither party can perform by proffering to the other a performance based on his interpretation of the contract. That is the question now before the Court. That is the reason why we have reserved jurisdiction.

Since the timing issue resulted principally, if not exclusively, from the oppositions filed by the executive officer-employees of CTR and by the almost three-year delay, which intensified and increased the problem of "consumed and depleted" equipment and allowed defendants to embark on such tactics as the bogus lease performance; since the issues placed before the Court in the Motion for Judicial Assistance must be resolved before a valid and legal sale can be consummated and payment in cash

consideration required; since the timing and termination provisions of the Purchase Agreement under these circumstances are not adequate or appropriate and cannot be met by any of the parties; and since we have reserved jurisdiction for the purpose of monitoring the performance of the Purchase Agreement and issuing orders necessary and appropriate to implement the performance of the Purchase Agreement and our judgment entered December 2, 1985; we find in equity, and notwithstanding any contractual provisions to the contrary, that the August 9, 1983 Purchase Agreement shall not be terminated by defendants for any reasons related to delays incurred in obtaining final FCC approval of the license transfer application or the application for such transfer. We further find that the contractual deadlines for the fulfillment of the parties' obligations pursuant to Paragraph 16 of the Agreement shall be extended for a period of six months from this date and that closing of the sale of KPLC-TV shall take place on August 26, 1986, in Lake Charles, Louisiana, at 10::00 A.M., at a place that is mutually convenient to the parties, and that the parties shall preclose the said transaction on August 25, 1986 in Lake Charles, Louisiana at a meeting to commence at 10:00 A.M. at a mutually convenient place.

CONCLUSION

The relief sought in NASCO's Motion for Judicial Assistance and/or Supervision is GRANTED. The relief, as determined in this Opinion, is necessary to achieve the intention of the parties as embodied in the August 9, 1983 Purchase Agreement, and to implement and effectuate the final judgment of this Court ordering the specific enforcement of that Agreement.

In light of the foregoing, we will order the closing of the sale of KPLC-TV to take place on August 26, 1986, in Lake Charles, Louisiana, at 10:00 A.M., at a place that is mutually convenient to the parties. In addition, the Court will order that the parties preclose the transaction on August 25, 1986, in Lake Charles, Louisiana, at 10:00

A.M., at a mutually convenient place.

DONE AND SIGNED at Alexandria, Louisiana, the 7th day of August, 1986.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

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[1] The defendants concede that NASCO is entitled to receive the music and music rights owned by or licensed to the station.

[2] There are four volumes of hearing transcript. In citing to the transcript, counsel has designated the transcript of July 16, 1986 as volume one (cited as "1 Tr. __"); the first transcript of July 21, 1986 as volume two (cited as "2 Tr. __"); the continuation transcript of July 21, 1986 as volume three (cited as "3 Tr. __"); and the transcript of July 22, 1986 as volume four (cited as "4 Tr. __").

[3] Plaintiffs discovered this action and reported it to the Court sometimes after hearing was resumed on July 21 and July 22. Mr. McCabe's explanation to the Court was that the defendants wanted to demonstrate that KPLC-TV could be operated with the original equipment and would still receive public acceptance when so operated. There is nothing wrong with that purpose. As any experienced attorney or a judge is aware, Mr. McCabe would have achieved much more credibility if he had given notice to opposing counsel and the Court. It is particularly true in this case when the Court, at the beginning of this hearing on July 16, 1986 and in open court, discussed with Mr. McCabe, as new counsel, the type of tactics which have been utilized in this case in the past. Our patience has been taxed too long.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

NASCO, INC.

-vs- : CIVIL ACTION
NO. 83:2564

CALCASIEU TELEVISION
AND RADIO, INC., G.
RUSSELL CHAMBERS AND
MABEL CHRISTINE
BAKER, TRUSTEE FOR THE
FACILITY TRUST

O R D E R

This matter came on for hearing on the Motion for judicial Assistance and/or Supervision filed by the plaintiff, NASCO, INC. The motion, the opposition, all evidence and stipulations and arguments of counsel having been considered, the law and evidence being in favor thereof, and in accordance with our written Opinion of this date, which is incorporated by reference herein; it is:

ORDERED, ADJUDGED AND DECREED that all tangible assets and equipment currently being used in the direct business and operation of television station KPLC-TV as of the date of closing, including all such tangible assets and equipment described in the April 1988 inventory exhibits (Exhibits P-30, P-31 and P-32), and including also those assets and that equipment acquired after August 9, 1983, as well as those assets and that equipment covered by the seventeen "lease agreements;; filed of record in this proceeding, and less and except those items excluded with plaintiff's acquiescence, as described in our Opinion, shall be conveyed to NASCO at closing for the originally designated purchase price of $18 million and that

Exhibit B of the August 9, 1983 Purchase Agreement shall be updated and revised in accordance with Exhibits P-30, P-31 and P-32 above referred to. It is:

FURTHER ORDERED, ADJUDGED AND DECREED that the two transmission towers included in the purchase assets are in the state of normal repair and operating efficiency except for the guy wires in the Jefferson Davis Parish tower as described in our Opinion of this date which is made a part hereof by reference, and the repair and maintenance work required for this purpose shall be undertaken at defendants' expense. To accomplish that end, bids will be sought by plaintiff from no less than three qualified bidders, in accordance with specifications provided by the plaintiff. If inspection is required by the bidding entities, the defendants shall allow those entities to inspect the towers upon reasonable notice. The lowest bid shall be accepted and the costs of the repairs shall be paid by the defendants by means of an appropriate credit against the purchase price. It is:

FURTHER ORDERED, ADJUDGED AND DECREED that the intangible assets to be conveyed to NASCO pursuant to the terms and provisions of the Agreement shall include the telephone numbers currently allocated to KPLC-TV, the post office box currently allocated to KPLC-TV, CTR's state unemployment tax rate, and all music and music rights owned by or licensed to KPLC-TV. It is:

FURTHER ORDERED, ADJUDGED AND DECREED that existing contracts of insurance purchased by the defendants to cover the purchased assets shall not be prorated between the parties at closing and plaintiff is not obligated to continue coverage of those insurance policies. It is:

FURTHER ORDERED, ADJUDGED AND DECREED that the closing shall take place at a time and place as herein set forth and that defendants shall deliver

to NASCO at closing full possession and control of all the purchased assets as described herein, and the $18 million purchase price shall be paid by NASCO into the Registry of the Court to be placed in the highest available interest bearing account. Those funds will be disbursed, with interest, and subject to such credits as appropriate, to the appropriate party, after due notice, with motion and hearing at such time as all clouds on the title to the purchased assets have been cleared, including full and final disposition of defendants' pending appeals. It is:

FURTHER ORDERED, ADJUDGED AND DECREED that, notwithstanding any contractual provisions to the contrary, the August 9, 1983 Purchase Agreement shall not be terminable by defendants for any reasons related to the time set forth therein, and that the contractual deadlines for fulfillment of the parties' obligations pursuant to Paragraph 16 of the Agreement shall be extended for a period of six months from this date, subject to the further orders of this Court. It is:

FURTHER ORDERED AND DECREED that the closing of the sale of KPLC-TV shall take place on August 26, 1986, in Lake Charles, Louisiana, at 10:00 A.M., at a place that is mutually convenient to the parties, and that the parties shall preclose the transaction on August 25, 1986, in Lake Charles, Louisiana, at a meeting to commence at 10:00 A.M. at a mutually convenient place.

Alexandria, Louisiana, this 7th day of August, 1986.

/s/ Nauman S. Scott

UNITED STATES DISTRICT JUDGE